

EXHIBIT C



WR Grace
 Bankruptcy Form 10
 Index Sheet

SR00000568

Claim Number: 00009560

Receive Date: 03/28/2003

Multiple Claim Reference

Claim Number _____

- ☐ MMPOC Medical Monitoring Claim Form
☐ PDPOC Property Damage
☐ NAPO Non-Asbestos Claim Form
☐ Amended

Claim Number _____

- ☐ MMPOC Medical Monitoring Claim Form
☐ PDPOC Property Damage
☐ NAPO Non-Asbestos Claim Form
☐ Amended

Attorney Information

Firm Number: 00325

Firm Name: Bingham McCutchen

Attorney Number: 00201

Attorney Name: Matt Lesnick

Zip Code: 90071-3106

Cover Letter Location Number: SR00000568

Attachments Medical Monitoring	Attachments Property Damage	Non-Asbestos
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	<input checked="" type="checkbox"/> Other Attachments
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
	<input type="checkbox"/> Other Attachments	
Other	<input type="checkbox"/> Non-Standard Form	
	<input type="checkbox"/> Amended	
	<input type="checkbox"/> Post-Deadline Postmark Date	

Box/Batch: WRBF0039/WRBF0156

Document Number: WRBF007779

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF Delaware		GRACE NON-ASBESTOS PROOF OF CLAIM FORM
Name of Debtor: W.R. Grace & Co. - Conn.	Case Number 01-1179	THIS SPACE IS FOR COURT USE ONLY
NOTE: Do not use this form to assert an Asbestos Personal Injury Claim, a Settled Asbestos Claim or a Zonolite Attic Insulation Claim. Those claims will be subject to a separate claims submission process. This form should also not be used to file a claim for an Asbestos Property Damage Claim or Medical Monitoring Claim. A specialized proof of claim form for each of these claims should be filed.		
Name of Creditor (The person or other entity to whom the Debtor owes money or property): Casmalia Resources Site Steering Comm.	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: c/o Matt Lesnick, Esq. Bingham McCutchen, LLP 355 South Grand Avenue, Suite 4400 Los Angeles, CA 90071		
Account or other number by which creditor identifies Debtor:	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
Corporate Name, Common Name, and/or d/b/a name of specific Debtor against whom the claim is asserted:		
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Environmental liability <input type="checkbox"/> Money loaned <input type="checkbox"/> Non-asbestos personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>See Attachment</u> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date)		
2. Date debt was incurred: 1980 to 1988		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: If all or part of your claim is secured or entitled to priority, also complete Item 5 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		Approx. \$22,255.44
5. Classification of Claim. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured Nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.		
<input type="checkbox"/> SECURED CLAIM (check this box if your claim is secured by collateral, including a right of setoff) Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Other (Describe briefly) _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ _____ Attach evidence of perfection of security interest <input checked="" type="checkbox"/> UNSECURED NONPRIORITY CLAIM A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.		<input type="checkbox"/> UNSECURED PRIORITY CLAIM - Specify the priority of the claim. <input type="checkbox"/> Wages, salaries, or commissions (up to \$4650), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		This Space is for Court Use Only
7. Supporting Documents: <u>Attach copies of supporting documents</u> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
8. Acknowledgement: Upon receipt and processing of this Proof of Claim, you will receive an acknowledgement card indicating the date of filing and your unique claim number. If you want a file stamped copy of the Proof of Claim form itself, enclose a self addressed envelope and copy of this proof of claim form.		
Date 3/27/03	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): See Attachment	
		WR Grace BF.39.156.7779 00009560 SR=568

REC'D MAR 28 2003

See General Instructions and Claims Bar Date Notice and its exhibits for names of all Debtors and "other names" used by the Debtors.

SPECIFIC INSTRUCTIONS FOR COMPLETING GRACE NON-ASBESTOS PROOF OF CLAIM FORMS

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, there may be exceptions to these general rules.

This Proof of Claim form is for Creditors who have Non-Asbestos Claims against any of the Debtors. Non-Asbestos Claims are any claims against the Debtors as of a time immediately preceding the commencement of the Chapter 11 cases on April 2, 2001 other than Asbestos Personal Injury Claims, Asbestos Property Damage Claims, Zonolite Attic Insulation Claims, Settled Asbestos Claims or Medical Monitoring Claims, as defined on the enclosed General Instructions. More specifically, Non-Asbestos Claims are those claims against one or more of the Debtors, whether in the nature of or sounding in tort, contract, warranty or any other theory of law or equity for, relating to or arising by reason of, directly or indirectly, any injury, damage or economic loss caused or allegedly caused directly or indirectly by any of the Debtors or any products or materials manufactured, sold, supplied, produced, specified, selected, distributed or in any way marketed by one or more of the Debtors and arising or allegedly arising directly or indirectly, from acts or omissions of one or more of the Debtors, including, but not limited to, all claims, debts, obligations or liabilities for compensatory and punitive damages.

Administrative Expenses: Those claims for, among other things, the actual, necessary costs and expenses of preserving the estate as defined in Section 503 of the Bankruptcy Code that arose after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to Section 503 of the Bankruptcy Code. This form should not be used to make a claim for an administrative expense.

Secured Claim: A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property. Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right to setoff), the creditor's claim may be a secured claim. (See also Unsecured Claim.)

Unsecured Claim: If a claim is not a secured claim, it is an unsecured claim. Unsecured claims are those claims for which a creditor has no lien on the debtor's property or the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Nonpriority Claim: Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as Unsecured Nonpriority Claims.

Information about Creditor: Complete this section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the court which sent notice, or if this proof of claim replaces or amends a proof of claim that was already filed, check the appropriate box on the form.

1. **Basis for Claim:** Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.
2. **Date Debt Incurred:** Fill in the date the debt was first owed by the debtor.
3. **Court Judgments:** If you have a court judgment for this debt, state the date the court entered the judgment.
4. **Amount of Claim:** Insert the amount of claim at the time the case was filed in the appropriate box based on your selected Classification of Claim in item 5. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.
5. **Classification of Claim:** Check either Secured, Unsecured Nonpriority or Unsecured Priority as appropriate. (See Definitions above.)

Unsecured Priority Claim: Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See Definitions, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.
6. **Credits:** By signing this proof of claim, you are stating under oath that in calculating the amount of your claim, you have given the debtor credit for all payments received from the debtor.
7. **Supporting Documents:** You must attach to this proof of claim form, copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Be sure to date the claim and place original signature of claimant or person making claim for creditor where indicated at the bottom of the claim form. Please type or print name of individual under the signature. Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable".

RETURN CLAIM FORM (WITH ATTACHMENTS, IF ANY) TO THE FOLLOWING CLAIMS AGENT FOR THE DEBTORS:

Claims Processing Agent
Re: W. R. Grace & Co. Bankruptcy
P.O. Box 1620
Fairbault, MN 55021-1620

The Bar Date for filing all NON-ASBESTOS CLAIMS against the Debtors is March 31, 2003 at 4:00 p.m. Eastern Time.

In re W.R. Grace & Co.-Conn. [Case No.01-1179]
Attachment to Proof of Claim filed on behalf of
the Casmalia Resources Site Steering Committee

1. This Proof of Claim is filed on behalf of the Casmalia Resources Site Steering Committee (the "Committee"). Attached as Exhibit A hereto and incorporated herein by this reference is a list identifying the name of each current member of the Committee. This Proof of Claim is for W.R. Grace & Co.-Conn.'s ("Debtor's") share of expenses, damages and response costs in connection with the Casmalia Resources Hazardous Waste Disposal Facility, located in the County of Santa Barbara, California (the "Site" or "Facility"). The Site is an inactive waste treatment, storage and disposal facility which, from approximately 1973 until 1989, accepted waste, including solid and liquid waste designated by the United States Environmental Protection Agency ("EPA") as hazardous substances as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601(14).
2. According to EPA, hazardous substances deposited at the Site have been released into the soil, groundwater, surface water and ambient air, posing an imminent and substantial endangerment to the public health and the environment. In 1992, EPA initiated a response action to stabilize and maintain the Site.
3. In March of 1993, EPA notified approximately 65 alleged former customers of the Facility of their potential liability under federal law for response costs incurred and to be incurred at the Facility. Fifty-four of these public and private entities formed the Committee to negotiate with EPA. Without admitting liability, the members of the Committee subsequently reached a settlement with EPA, which was memorialized in a federal Consent Decree approved and entered by the United States District Court of the Central District of California on June 27, 1997. A copy of the Consent Decree is attached hereto as Exhibit B.
4. Pursuant to the Consent Decree, the Committee has incurred and will continue to incur substantial costs to maintain and close the Facility in accordance with federal law. The Committee has also reimbursed and committed to reimburse EPA for certain past and future response costs incurred as a result of a release or threatened release of hazardous substances at the Site.
5. Debtor has been identified as a potentially responsible party pursuant to federal and state law with respect to the Site. Debtor was a generator of hazardous substances deposited at the Site. Based on its status as a generator, Debtor is liable to the Committee under federal and state law for costs incurred and to be incurred in addressing the serious environmental problems at the Site. To date, Debtor has not contributed any sums to the costs incurred and to be incurred in addressing the serious environmental problems at the Site.
6. The Committee was organized in 1993 by certain of its members for the purpose of cooperating in a common response to or defense of claims arising out of the Site. The Committee has engaged the law firm of Bingham McCutchen LLP (formerly known as McCutchen, Doyle, Brown & Enersen, LLP) to serve as common counsel to the Committee.

7. Under CERCLA and/or its state law counterparts, Debtor is jointly and severally liable for all response costs associated with the cleanup of the Site consistent with the national contingency plan, which costs are currently estimated to be \$271.9 million. The Committee is informed that EPA has already incurred costs associated with cleaning up the Site in an unknown amount.

8. While Debtor is liable for the full \$271.9 million described above, the Committee is willing to claim only \$22,255.44. This amount represents one method of calculating Debtor's fair share of \$271.9 million, based on the amount of waste Debtor disposed of at the Site. Records show that Debtor disposed of approximately 368,332 pounds of waste at the Site.

9. The Committee is unaware of any claim of the Committee or of its members which was acquired within one year of the filing of Debtor's petition.

10. The Committee is unaware of any sale or other disposition of the claims of the Committee or any of its members.

11. It is impractical for the Committee to provide full documentation here regarding its claim against Debtor because the documentation is extensive and, further, some of it is in the exclusive possession of EPA or is otherwise not in the possession of the Committee. The Committee reserves the right to amend this Proof of Claim at such time as further information regarding its claim becomes available. Without limiting the generality of the foregoing, if an objection to its claim is filed, the Committee reserves the right to assert the full amount of its claim, currently estimated to be \$271.9 million.

12. The Committee is empowered to act on behalf of its members pursuant to a joint defense agreement, which has been withheld as privileged and confidential.

13. Nothing in this proof of claim is a waiver of any of the Committee's rights, including, without limitation, the right to request payment of chapter 7 or chapter 11 administrative expenses. The Committee reserves the right to amend this claim and to supply further supporting documentation, including amendment to increase or specify the amount and priority of the claim. The Committee also reserves the right to assert this claim against affiliated Debtor entities in related bankruptcy cases.

Casmalia Resources Site Steering Committee

By: BINGHAM McCUTCHEN LLP


By: 
for James J. Dragna

Exhibit A

EXHIBIT A

Members of Casmalia Resources Site Steering Committee

- ABB Vetco Gray Inc.
- Aerochem, Inc.
- Aerojet General Corporation
- BP America, Inc. for Atlantic Richfield Company ("ARCO")
- Boeing North American, Inc., formerly known as Rockwell International Corporation
- Chevron Texaco Corporation
- City of Los Angeles
- City of Los Angeles Harbor Department, acting by and through its Board of Harbor Commissioners
- City of Oxnard
- Clairol, Inc.
- El Paso Production Oil & Gas Co. for Coastal Oil & Gas Corporation
- Conoco Inc.
- County of Los Angeles
- Department of Airports, acting through and on behalf of the City of Los Angeles
- Department of Water & Power of the City of Los Angeles
- Everest & Jennings International
- Exxon Mobil Corporation
- Gemini Industries, Inc.
- General Dynamics Corporation
- General Electric Company
- General Motors Corporation
- Sanmina-SCI Corporation for Hadco Santa Clara, Inc., formerly known as Zycon Corporation
- Raytheon Company for Hughes Aircraft Company
- Lever Brothers Company
- Lockheed Martin Corporation (merged entity for Lockheed Corporation and Martin Marietta Corporation)
- McDonnell Douglas Corporation
- New VICI, Inc.
- Northrop Grumman Corporation (successor to Northrop Corporation)
- Waste Management, Inc. for Oil & Solvent Process Company
- Pacific Gas & Electric Company
- Sempra Energy for Pacific Offshore Pipeline Company
- Reynolds Metals Company
- R.G.G.L. Corporation
- Rhodia Inc. for Rhone-Poulenc Inc.
- Goodrich Corporation for Rohr, Inc., formerly Rohr Industries
- Romic Environmental Technologies Corporation
- Shell Oil Company
- Rohm & Haas for Shipley Company, Inc.
- Southern California Gas Company

- Union Pacific Railroad for Southern Pacific Transportation Company
- Square D Company
- Teleflex Incorporated
- Texaco Inc.
- The Deutsch Company
- The Dow Chemical Company
- The Procter & Gamble Manufacturing Company
- Todd Pacific Shipyards Corp.
- Union Oil Company of California dba Unocal
- Union Pacific Railroad Company for itself
- Anadarko Petroleum Corporation for Union Pacific Resources Company
- Clean Harbors Environmental Services for Solvent Service
- Zeneca Inc.

Exhibit B

1 LOIS J. SCHIFFER
2 Assistant Attorney General
3 Environment and Natural Resources Division

4 LESLIE ALLEN, Attorney
5 Environmental Enforcement Section
6 Environment and Natural Resources Division
7 United States Department of Justice
8 P. O. Box 7611
9 Washington, D.C. 20044-7611
10 (202) 514-4114

11 NORA M. MANELLA
12 United States Attorney for the
13 Central District of California
14 LEON W. WEIDMAN
15 Chief, Civil Division
16 KURT ZIMMERMAN
17 Assistant United States Attorney
18 300 North Los Angeles Street
19 Los Angeles, California 90012
20 (213) 894-2434

21 NANCY J. MARVEL
22 Regional Counsel
23 JOANNE S. MARCHETTA
24 Assistant Regional Counsel
25 U.S. Environmental Protection Agency
26 75 Hawthorne Street
27 San Francisco, California 94105
28 (415) 744-1315

Attorneys for Plaintiff United States

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

CIVIL ACTION NO.

v.

ABB VETCO GRAY INC.;
AEROCHEM, INC.;
AEROMET GENERAL CORPORATION;
ATLANTIC RICHFIELD COMPANY (ARCO);
CASPIAN INC.;
CHEVRON CORPORATION;
CITY OF ORLAND;
CLAIRB, INC.;
COASTAL OIL & GAS CORPORATION;
COROCO INC.;
DEUTSCH COMPANY;
THE DON CHEMICAL COMPANY;

CONSENT DECREE

Casmilla Consent Decree

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1 EVEREST & JENNINGS INTERNATIONAL;
2 EXXON CORPORATION;
3 GEMINI INDUSTRIES, INC.;
4 GENERAL DYNAMICS CORPORATION;
5 GENERAL ELECTRIC COMPANY;
6 GENERAL MOTORS CORPORATION;
7 HUGHES AIRCRAFT COMPANY, and its
8 subsidiaries;
9 LEVER BROTHERS COMPANY;
10 LOCKHEED MARTIN CORPORATION,
11 (merged entity for LOCKHEED
12 CORPORATION and MARTIN MARIETTA
13 CORPORATION);
14 McDONNELL DOUGLAS CORPORATION;
15 MOBIL OIL CORPORATION;
16 NEW VICI INC. (for CONZALES/
17 MONTEREY VINEYARD);
18 NORTHROP GRUMMAN CORPORATION;
19 OIL & SOLVENT PROCESS COMPANY, a
20 subsidiary of CHEMICAL WASTE
21 MANAGEMENT, INC.;
22 PACIFIC GAS & ELECTRIC COMPANY;
23 PACIFIC OFFSHORE PIPELINE COMPANY;
24 THE PROCTOR & GAMBLE MANUFACTURING
25 COMPANY;
26 RETNOLDS METALS COMPANY;
27 R.G.G.-L. CORPORATION;
28 RHONE-POULENC INC.;
ROCKWELL INTERNATIONAL
CORPORATION;
ROHR, INC., formerly ROHR
INDUSTRIES, INC.
ROMIC ENVIRONMENTAL TECHNOLOGIES
CORPORATION;
SHELL OIL COMPANY;
SHIPLEY COMPANY, INC.;
SOUTHERN CALIFORNIA GAS COMPANY;
SOUTHERN PACIFIC TRANSPORTATION
COMPANY;
SQUARE D COMPANY;
TELEFLEX INCORPORATED;
TEXACO INC.;
TODD PACIFIC SHIPYARDS CORP.;
UNION OIL COMPANY OF CALIFORNIA,
INC. dba UNOCAL;
UNION PACIFIC RESOURCES COMPANY;
UNION PACIFIC RAILROAD COMPANY;
USPCI for SOLVENT SERVICE;
ZENECA INC. and
ZYCON CORPORATION,
Defendants.

Casmilla Consent Decree

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02-0067472

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02-0067473

Casella Consent Decree 11

Casella Consent Decree 1

CASMALIA CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed concurrently with this Consent Decree ("Consent Decree" or "Decree") a complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to compel the Settling Defendants in this action to perform certain response actions and to pay certain response costs that may be incurred by the United States in response to alleged releases and threatened releases of hazardous substances from a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), known as the Casmalia Resources Hazardous Waste Management Facility ("the Casmalia facility" or "the facility"), located in Santa Barbara County, California; and

WHEREAS, the United States' complaint also seeks to compel the Settling Defendants to take certain actions under the Resource Conservation and Recovery Act, as amended ("RCRA"), pursuant to Section 7003, 42 U.S.C. §§ 6973; and

WHEREAS, pursuant to CERCLA § 121(f)(1)(F), the State of California was given notice of EPA's negotiations with the Settling Defendants and was provided with opportunities to participate in such negotiations and be a Party to this Consent Decree; and

WHEREAS, the State of California has indicated its support of EPA in acting as the lead governmental regulatory and

Casmalia Consent Decree

enforcement agency with respect to matters relating to the Site as provided herein notwithstanding that the State is authorized to implement portions of the federal RCRA program in lieu of EPA; and

WHEREAS, this Consent Decree is intended to govern all site regulatory and enforcement activities; and

WHEREAS, the United States contends that the presence of solid wastes, hazardous wastes, hazardous constituents and/or hazardous substances in the soil, groundwater, surface water and air at the facility resulted from the past or present handling, storage, treatment and/or disposal of solid wastes, hazardous wastes, hazardous constituents and/or hazardous substances at the facility, and may present an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973; and

WHEREAS, the United States contends that the presence of hazardous wastes, hazardous constituents, and/or hazardous substances at the facility constitutes a release from the facility, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), which release may present an imminent and substantial

endangerment to the public health or welfare or the environment, within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606, and the actions required by this Consent Decree are necessary to protect public health, welfare and the environment; and

WHEREAS, the Settling Defendants are "persons" subject to liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973; and

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.

C-006-1-1 23 24 25 26 27 28

1 § 9622, and Section 7003 of RCRA, 42 U.S.C. § 6973, the United
 2 States and the Settling Defendants have stipulated and agreed to
 3 the making and the entry of this Consent Decree prior to the
 4 taking of any testimony, and in settlement of the claims alleged
 5 against the Settling Defendants in the complaint; and
 6 WHEREAS, these agreements have been made without any
 7 admission or finding of liability or fault as to any allegation
 8 or matter; and
 9 WHEREAS, the United States and the Settling Defendants
 10 agree, and the Court by entering this Consent Decree finds, that
 11 the settlement of these claims is made in good faith and in an
 12 effort to avoid expensive and protracted litigation, and that
 13 this Consent Decree is fair, reasonable, and in the public
 14 interest;

15 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as
 16 follows:

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1. DEFINITIONS

Unless otherwise expressly provided herein, terms used in
 this Consent Decree which are defined in CERCLA or RCRA or in
 regulations promulgated under CERCLA or RCRA shall have the
 meaning assigned to them in CERCLA, RCRA, or in such regulations.
 Whenever terms listed below are used in this Consent Decree or in
 the appendices attached hereto and incorporated hereunder, the
 following definitions shall apply:

"Administrative Costs" shall mean, with respect to the
 Settling Defendants, the costs associated with the Caswellia
 Resource Site Steering Committee ("CRSC") organization and
 administration or any successor organization and its
 administration, including attorney fees and legal support costs
 associated with such organization and administration.

Administrative Costs shall not include the costs of the Settling
 Defendants' Supervising Contractor or Project Coordinators,
 unless such Supervising Contractor or Project Coordinator is an
 active employee of a Settling Defendant.

"Cashout Settlement(s)" shall mean the procedure(s) to be
 implemented by EPA whereby substantially all remaining
 potentially responsible parties associated with the Caswellia Site
 are notified by EPA and provided with an opportunity to pay
 specified sums toward resolution of their potential Caswellia Site
 liabilities under CERCLA and RCRA. Settlement proceeds from the
 Cashout Settlement(s) shall be deposited to the Caswellia Consent
 Decree Escrow Account to be used to pay for performance of
 certain work and to pay for certain Response Costs in accordance
 with the terms of this Consent Decree.

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"Casamalia Consent Decree Escrow Account" or "Escrow Account" shall mean the Accounts, together with any and all Sub-Accounts, established pursuant to Section XVII. (Escrow Accounts/Financing The Work), for the purpose of holding and allocating funds received from the Cashout Settlements, proceeds of any actions, claims, settlements, or other efforts pursuant to Section XXIII. (Coordinated Enforcement Recovery); and funds from other sources not precluded by this Consent Decree, to be used to pay for performance of the Initial Phase II Work and O&M and for specified Response Costs.

"Casamalia Entities" shall mean Casamalia Resources; Hunter Resources; and Kenneth Hunter, Jr., and any related entities or individuals with potential liability in connection with the ownership or operation of the Casamalia site.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

"Consent Decree" shall mean this Decree, all appendices attached hereto (listed in Section XXII.), and any additions and modifications to this Consent Decree and its appendices made in accordance with its terms. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" shall mean a calendar day, unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of

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time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

"Defendants" shall mean Settling Defendants.

"Deliverable" shall mean all submissions and/or milestone events required of the Settling Defendants under Section 4.0. of the SOM, including any additions and modifications to this Section of the SOM made in accordance with the terms of this Consent Decree.

"DTSC" shall mean the Department of Toxic Substances Control of the State of California and any successor department or successor agencies.

"Element(s) of Work" shall mean the specific work elements as set forth in the Statement of Work attached at Appendix A. Each Element of Work may have multiple Components as specified in the SOM.

"EPA" shall mean the United States Environmental Protection Agency or its authorized representative(s) and any successor departments or successor agencies of the United States.

"Escrow Account" -- See Casamalia Consent Decree Escrow Account.

"Final Cost Estimate" shall mean the final revision of the cost estimates established pursuant to Section XVIII. Paragraph A.3. (Cost Estimates and Fund Transfer) and Section 2.13 of the SOM of the total present worth costs to be incurred to complete 30-Year O&M Work and Post-30 Year O&M Work and associated governmental/regulatory oversight determined in accordance with

the terms of this Consent Decree and the SOM. The Final Cost

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1 Estimate shall be separated into sub-components of cost as set
 2 forth in Section 2.15. of the ROW.
 3 "Final Past Response Costs Summary" shall mean the
 4 accounting of the United States' Past Response Costs, pursuant to
 5 Section XIX. Paragraph B.1. (Reimbursement of Response Costs),
 6 that shall supersede the Initial Past Response Costs Estimate for
 7 purposes of establishing the Escrow Account Funding Limits
 8 pursuant to Section XVII. Paragraph E. (Escrow Accounts/Financing
 9 The Work).
 10 "Full Funding Option(s)" shall mean the Settling Defendants'
 11 right to obtain a covenant not to sue for 30-Year O&M and/or
 12 Post-30 Year O&M as provided under Section XIV. Paragraphs A.3.a.
 13 or A.3.b. and A.4.a. or A.4.b. (Covenants Not to Sue/Reservations
 14 of Rights) of this Consent Decree.
 15 "Funded Future Response Costs" -- see Future Response Costs.
 16 "Funding Limit(s)" shall mean the authorized monetary
 17 limits, as provided in Section XVII. Paragraph E. (Escrow
 18 Accounts/Financing The Work), to which each Account and Sub-
 19 Account in the Casella Consent Decree Escrow Account may be
 20 funded from proceeds of the Cashout Settlements, if available;
 21 proceeds of actions, claims, settlements, or other efforts
 22 pursuant to Section XXIII. (Coordinated Enforcement Recovery); or
 23 other funding sources not precluded by this Consent Decree. The
 24 Funding Limits for Work Phases shall be established on the basis
 25 of cost estimates for performance of the Work pursuant to Section
 26 XVIII. Paragraph A. (Cost Estimates and Fund Transfers). The
 27 Funding Limit for Past Response Costs shall be established
 28 pursuant to Section XIX. Paragraph B.2. and Paragraph E.

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1 (Reimbursement of Response Costs). The Funding Limit for the
 2 Phase II Future Response Costs Sub-Account of the Phase II
 3 Account shall be established in accordance with the terms of
 4 Section XIX. Paragraph D. (Reimbursement of Response Costs) and
 5 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfers).
 6 The Funding Limits for the 30-Year and Post-30 Year O&M Oversight
 7 Sub-Accounts shall be established in accordance with the terms of
 8 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfers).
 9 "Future Response Action(s)" shall mean those activities
 10 undertaken by the United States and its authorized
 11 representatives associated with removal and remedial action in
 12 connection with the Casella Site, including but not limited to,
 13 enforcement and governmental/regulatory oversight of any tasks
 14 and activities undertaken by Settling Defendants and other
 15 response actions performed pursuant to this Consent Decree or
 16 otherwise in connection with the Site.
 17 "Future Response Costs" shall mean all costs of response,
 18 including but not limited to direct and indirect costs and
 19 interest, that the United States will incur in connection with
 20 the Site beginning on the thirtieth (30th) day following entry of
 21 this Consent Decree. Future Response Costs may be either Funded
 22 or Unfunded. "Funded Future Response Costs" shall mean any costs
 23 payable and paid to EPA (a) by Settling Defendants pursuant to
 24 Section XIX. Paragraph C. (Reimbursement of Response Costs) and
 25 (b) from the Phase II Account of the Casella Consent Decree
 26 Escrow Account pursuant to Section XIX. Paragraph D.
 27 (Reimbursement of Response Costs). "Unfunded Future Response
 28 Costs" shall mean all Future Response Costs that are not Funded

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1 Future Response Costs and shall include any unreimbursed or
 2 uncollected costs of response associated with the United States'
 3 Future Response Actions, including costs that the United States
 4 incur in actions against Third Parties that are not reimbursed
 5 pursuant to Section XXIII. (Coordinated Enforcement).
 6 "Initial Cost Estimate" shall mean the preliminary estimates
 7 established pursuant to Section XVIII. Paragraph A.1. (Cost
 8 Estimates and Fund Transfers) and Section 2.15. of the ROW of the
 9 total present worth costs to be incurred to complete all Site
 10 Work and Future Response Actions determined in accordance with
 11 the terms of this Consent Decree and the ROW. The Initial Cost
 12 Estimate shall be separated into sub-components of cost as set
 13 forth in Section 2.15. of the ROW.
 14 "Initial Past Response Costs Estimate" shall mean the United
 15 States' estimate of Past Response Costs, pursuant to Section XIX,
 16 Paragraph B.1. (Reimbursement of Response Costs), incurred in
 17 connection with the Caswellia Site up to, but not including, the
 18 thirtieth (30th) day following entry of this Consent Decree. The
 19 Initial Past Response Costs Estimate shall be effective for the
 20 purpose of establishing the Funding Limits for Section XVII.
 21 Paragraph E. (Escrow Accounts/Financing The Work) until
 22 superseded by EPA's Final Past Response Costs Summary and/or any
 23 adjustments, pursuant to Section XIX, Paragraphs B.2. and E.
 24 (Reimbursement of Response Costs).
 25 "Initial Phase II Work" shall mean all Phase II Work, except
 26 for the OGM Base Period Work. Initial Phase II Work shall be
 27 complete as of the date set forth in EPA's written acceptance of
 28 the Initiation of Operation Report, OGM Base Period Component of

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1 Work, pursuant to Section 3.7.4. of the ROW.
 2 "Interim Cost Estimate" shall mean the revised cost
 3 estimates established pursuant to Section XVIII. Paragraph A.2.
 4 (Cost Estimates and Fund Transfers) and Section 2.15. of the ROW
 5 of the total present worth costs to be incurred to complete all
 6 Site Work and Future Response Actions determined in accordance
 7 with the terms of this Consent Decree and the ROW. The Interim
 8 Cost Estimate shall be separated into sub-components of cost as
 9 set forth in Section 2.15. of the ROW.
 10 "National Contingency Plan" or "NCP" shall mean the National
 11 Oil and Hazardous Substances Pollution Contingency Plan, dated
 12 March 8, 1990 (55 Fed. Reg. 8813), promulgated pursuant to
 13 Section 105 of CERCLA, 42 U.S.C. § 9605.
 14 "Operation and Maintenance" or "O & M" shall mean all tasks
 15 and activities required to maintain the effectiveness of the
 16 response actions implemented under the Phase I and Initial Phase
 17 II Work. For purposes of this Consent Decree, O&M will be
 18 divided into three time periods: (a) O&M activities performed by
 19 Settling Defendants during the first five (5) years of O&M ("OGM
 20 Base Period Work"); (b) O&M activities performed for the next
 21 thirty (30) years (i.e. years 6 through 35 of O&M ("30-Year OGM
 22 Work"); and (c) O&M activities to be performed after the 30-Year
 23 O&M Work ("Post-30 Year OGM Work"). Except as set forth in
 24 Section XVII. (Escrow Accounts/Financing The Work), Section
 25 XVIII. (Cost Estimates and Fund Transfers), Paragraphs A.2. and
 26 A.4. of Section XXV. (Covenants Not To Sue/Reservations of
 27 Rights), and Section XXVI. (Effect of Settlement/Contribution
 28 Protection), Operation and Maintenance (OGM) shall not include

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1 the costs or performance of governmental/regulatory oversight,
2 including enforcement, of the O&M Work.
3 "O&M Base Period" shall mean the five (5) year period
4 beginning on the date set forth in EPA's written acceptance of
5 the Initiation of Operation Report, Operation and Maintenance
6 Base Period Component of Work, pursuant to Section 5.7.4. of the
7 ROW.
8 "O&M Base Period Work" shall mean the implementation of all
9 tasks and activities of the Operation and Maintenance Base Period
10 Component of Work, pursuant to Section 2.10.5. of the ROW,
11 necessary to complete the O&M performed during the O&M Base
12 Period.
13 "Paragraph" shall mean a portion of this Consent Decree
14 identified by an upper case letter or an Arabic numeral.
15 "Parties" shall mean the signatories to this Consent Decree
16 -- the United States and the Settling Defendants.
17 "Past Response Costs" shall mean all costs of response,
18 including but not limited to direct and indirect costs and
19 interest, that the United States incur in connection with the
20 Site from March 1, 1993 up to, but not including, the thirtieth
21 (30th) day following entry of this Consent Decree. Past Response
22 Costs shall also include Unfunded Future Response Costs that may
23 periodically be added as an adjustment to the Past Response Costs
24 Funding Limit pursuant to Section XIX, Paragraph E.
25 (Reimbursement of Response Costs).
26 "Performance Standards" shall mean those cleanup standards,
27 standards of control, and other substantive requirements,
28 criteria or limitations to be achieved by the Settling Defendants
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1 In implementing the Elements and Components of Work. The
2 Performance Standards for the Phase I and Phase II Work are
3 specified in Section 2.0. of the ROW. To the extent not defined
4 in the attached ROW, Performance Standards shall be set forth, as
5 appropriate, in a future EPA ROD or other response action
6 decision document(s), later amendment(s) to the ROW, or in EPA
7 approvals and decisions made under the ROW.
8 "Phase I Work" shall mean the performance of all tasks and
9 activities necessary to implement the Elements and Components of
10 Work listed in Section 1.2.13. of the ROW, and any modifications
11 thereto, in accordance with the requirements of this Consent
12 Decree. The completion of all tasks and activities in Phase I
13 Work is not a pre-requisite to initiating tasks and activities in
14 the Phase II Work.
15 "Phase II Work" shall mean any Work to be implemented at the
16 Site that is not within Phase I Work or 30-Year and Post-30 Year
17 O&M Work. Phase II Work shall mean the performance of all tasks
18 and activities necessary to implement the Elements and Components
19 of Work listed in Section 1.2.14. of the ROW; any modifications
20 thereto, in accordance with the requirements of this Consent
21 Decree; and any response actions selected by EPA under a future
22 ROD or other response action decision document(s), as appropriate
23 and necessary. Except as set forth in Section XVII, (Zerrow
24 Accounts/Financing The Work) and Section XVIII, (Cost Estimates
25 and Fund Transfers), Phase II Work shall not include the costs or
26 performance of governmental/regulatory oversight, including
27 enforcement.
28 "Plaintiff" shall mean the United States.
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1 "Post-30 Year O&M Work" -- See Operation and Maintenance.
 2 "RCRA" shall mean the Solid Waste Disposal Act, as amended,
 3 42 U.S.C. § 5901 et seq. (also known as the Resource
 4 Conservation and Recovery Act).

5 "RCRA Trust Fund" shall mean any trust fund, and any
 6 amendments thereto, established pursuant to the financial
 7 responsibility provisions of RCRA § 3004(t), 42 U.S.C.
 8 § 5924(t), as promulgated in regulations at 40 C.F.R. § 265.103,
 9 for the benefit of the Casamalia Site, or any superseding account
 10 holding monies from any such Trust Fund.

11 "Record of Decision" or "ROD" shall mean the EPA decision
 12 document(s) prepared after completion of the Remedial
 13 Investigation/Feeability Study Component of Work pursuant to
 14 Section 2.10.2. of the SOM.

15 "Section" shall mean a portion of this Consent Decree
 16 identified by a roman numeral.

17 "Settling Defendants" shall mean all Parties listed in
 18 Appendix C and any related entities specifically identified
 19 therein and in Appendix D, as provided in Section IV. (Parties
 20 Bound).

21 "Site" or "Casamalia Site" shall mean generally the Casamalia
 22 Resource Hazardous Waste Management Facility, encompassing
 23 approximately 253 acres, located approximately 10 miles southwest
 24 of Santa Maria and one and a half miles north of Casamalia in
 25 Santa Barbara County, California and depicted generally on the
 26 map attached at Appendix B. Site shall include the areal extent
 27 of contamination that is presently located in the vicinity of the
 28 Casamalia facility and all suitable areas in very close proximity

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1 to the contamination necessary for the implementation of the
 2 response action and any areas to which such contamination
 3 migrates.

4 "State" shall mean the State of California, including all of
 5 its departments, agencies, boards, and divisions.

6 "Statement of Work" or "SOW" shall mean the document
 7 appended to and incorporated into this Consent Decree at Appendix
 8 A, and any modifications and amendments thereto made in
 9 accordance with this Consent Decree, detailing the requirements
 10 for performance of the Work.

11 "Supervising Contractor" shall mean the principal contractor
 12 retained by the Settling Defendants to supervise and direct the
 13 implementation of the Phase I and Phase II Work under this
 14 Consent Decree.

15 "Support Costs" shall mean those costs incurred by the
 16 Settling Defendants to implement the tasks and activities
 17 required in Section 2.14. of the Statement of Work and shall not
 18 include any Administrative Costs.

19 "Third Party" shall mean any potentially responsible party
 20 who is not a signatory to this Consent Decree or who is a
 21 signatory and has not resolved its liability hereunder.

22 "30-Year O&M Work" -- See Operation and Maintenance.

23 "Unfunded Future Response Costs" -- see Future Response
 24 Costs.

25 "United States" shall mean the United States of America.

26 "Waste Material" shall mean (1) any "hazardous substance"
 27 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
 28 pollutant or contaminant under Section 103(13), 42 U.S.C.

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1 § 9601(33); (3) any hazardous waste under Section 1004(b) of RCRA
 2 or hazardous constituent as defined at 40 C.F.R. § 260.10
 3 pursuant to RCRA; (4) any "solid waste" under Section 1004(27) of
 4 RCRA, 42 U.S.C. § 6903(27); and (5) any hazardous substance under
 5 California Health and Safety Code §§ 25316 and 25317.
 6 "Work" shall mean any or all tasks and activities included
 7 or to be included in Phase I Work, Initial Phase II Work and O&M
 8 under this Consent Decree, except those required by Section
 9 XXVII. (Retention of Records). Except as provided otherwise in
 10 this Consent Decree, Work shall not include the costs of
 11 performance of governmental/regulatory oversight, including
 12 enforcement.
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11. JURISDICTION

1 This Court has jurisdiction over the subject matter of this
 2 action pursuant to 42 U.S.C. §§ 9606, 9607, and 9613(b); 42
 3 U.S.C. § 6973; and 28 U.S.C. §§ 1331 and 1345. This Court also
 4 has personal jurisdiction over the Settling Defendants. Solely
 5 for the purposes of the entry and enforcement of this Consent
 6 Decree, Settling Defendants waive all objections and defenses
 7 that they may have to jurisdiction of the Court or to venue in
 8 this District. Settling Defendants shall not challenge the terms
 9 of this Consent Decree or this Court's jurisdiction to enter and
 10 enforce this Consent Decree.
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III. DENIAL OF LIABILITY

The Settling Defendants deny any and all legal or equitable liability under any federal, state, or local statute, regulation or ordinance, or common law, for any claim related to the Site. Except as otherwise provided, nothing in this Consent Decree shall constitute an admission or waiver of any kind. Nothing in this Section shall alter Settling Defendants' agreement not to challenge the Court's jurisdiction as set forth in Section II. (Jurisdiction).

IV. PARTIES BOUND

A. The Parties to this Consent Decree are its signatories -- the United States of America and the Settling Defendants.

B. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

C. Other parties potentially responsible for the Casamalia Site are identified in a customer data base and associated records that had previously been maintained by Casamalia Resources at the Casamalia facility. A complete listing of such parties has been reviewed by an authorized representative of each Settling Defendant, and affiliated or otherwise related entities to the Settling Defendants have been identified and listed in Appendix D. To the extent an affiliate of, or entity otherwise related to, any Settling Defendant is not specifically identified in Appendix D, it shall not be deemed to be a party to this Consent Decree, and shall not be subject to any of the rights, benefits, obligations, or requirements of this Consent Decree.

D. Settling Defendants shall provide a copy of this Consent Decree, as entered, and all relevant additions and modifications to this Consent Decree, as appropriate, to each person, including all contractors retained by Settling Defendants to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work within thirty (30) days of retention. Settling Defendants shall require all such persons to perform their duties

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1 with respect to the Site and the Work in compliance with the
 2 terms of this Consent Decree. Settling Defendants, or their
 3 contractors, shall provide written notice of the Consent Decree,
 4 and any additions or modifications, to all subcontractors
 5 retained or assigned to perform any portion of the Work required
 6 by this Consent Decree. Settling Defendants shall nonetheless be
 7 responsible for ensuring that their contractor and
 8 subcontractors perform the Work contemplated herein in accordance
 9 with this Consent Decree.

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V. SITE BACKGROUND

1 The following is a summary of the Site background as alleged
 2 by the United States which, for purposes of this Consent Decree,
 3 the Parties neither admit nor deny:

4 A. The Casmalia Resources Hazardous Waste Management
 5 Facility in northern Santa Barbara County, California is an
 6 inactive commercial hazardous waste treatment, storage and
 7 disposal facility, which accepted large volumes of waste
 8 materials from 1973 to 1989. The facility is located on
 9 approximately 352 acres and consists of former surface
 10 impoundments, a number of inactive waste landfills, on-site
 11 treatment systems used during the facility operating period, and
 12 several engineering control structures put in place during the
 13 facility's operational years. See Appendix B.

14 B. The Site is located in the Santa Maria Basin of coastal
 15 California near the southern end of the Casmalia Hills and about
 16 a mile and a half north of the town of Casmalia. The facility
 17 itself, located within the Shuman Canyon drainage sub-basin, is
 18 on a southern facing slope traversed by three small canyons.
 19 Casmalia Creek, about 500 feet west, is the nearest surface water
 20 to the Site. This creek flows to the southwest to join Shuman
 21 Creek about one mile southwest of the town of Casmalia. Shuman
 22 Creek continues southward and westward, eventually discharging to
 23 the Pacific Ocean. See Appendix B.

24 C. The uppermost water bearing formation underlying the
 25 Site is the Todos Santos Claystone Member of the Siguac
 26 Formation. The upper weathered claystone layer is highly
 27 fractured and ranges in thickness between 10 to 60 feet. The

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1 lower unweathered claystone beneath the weathered layer is less
2 fractured. The pervasive fracturing of the upper claystone layer
3 results in localized flow variations throughout the Site, but the
4 hydraulic conductivity of the unweathered claystone is
5 significantly less than that found in the weathered claystone.

6 D. There have been and continue to be actual and
7 threatened releases of Waste Materials at the Site. The Site now
8 presents and may continue to present a threat to human health and
9 the environment.

10 E. During the facility's operation, the owners/operators
11 accepted billions of pounds of commercial and industrial wastes
12 from thousands of generators that include large and small private
13 entities and numerous federal, state, local and municipal
14 government entities.

15 F. From 1980 to 1989, the Casamalia facility was operated
16 under federal interim status pursuant to RCRA. Because of
17 continuing deficiencies in the facility operations, no final RCRA
18 permit has been granted, and the facility has not been adequately
19 closed in accordance with requirements of RCRA.

20 G. In late 1989, the owners/operators ceased accepting
21 shipments of off-site waste and, in 1991, ceased all active
22 efforts to clean up and close the facility asserting that they
23 have insufficient monies to pay for cleanup or closure
24 activities.

25 H. The facility's closure trust fund, the RCRA Trust Fund,
26 which as of June 1996 totals approximately \$10 million, set aside
27 by the facility owners/operators, is insufficient to cover
28 closure and post-closure activities at the Site.

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1 I. Since the facility ceased accepting waste in 1989, the
2 owners/operators have progressively reduced site maintenance
3 activities. In response to unstable and deteriorating conditions
4 at the Site, in August 1992, EPA initiated a removal action,
5 pursuant to CERCLA section 104, 42 U.S.C. § 9604, to implement
6 certain interim stabilization actions, prevent further
7 deterioration of site conditions, and control the most immediate
8 threats. The Site continues to pose an imminent and substantial
9 endangerment within the meaning of Section 106 of CERCLA and
10 Section 7003 of RCRA. 42 U.S.C. § 9606, 42 U.S.C. § 6973.

11 J. Because the owners/operators of the Site have failed to
12 perform sufficient closure and remediation activities, in March
13 1993, under CERCLA and RCRA authorities, EPA notified a group of
14 approximately 63 Casamalia waste generators, representing some of
15 the largest disposers of waste, of their potential liability for
16 site remediation. Approximately 30 of the first 63 notified
17 generators formed the Casamalia Resources Site Steering Committee
18 ("CRSSC"). EPA negotiated with the CRSSC and other potentially
19 responsible parties ("PRPs") to secure implementation of response
20 actions at the Site as detailed by the terms of this Consent
21 Decree.

22 K. EPA intends that all work performed at the Site will be
23 consistent with the requirements of CERCLA and the National
24 Contingency Plan ("NCP").

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VI. PURPOSE AND REGULATORY FRAMEWORK

A. The fundamental purposes of this Consent Decree are to:
(1) provide a CERCLA framework for a comprehensive,

coordinated and site-wide response to all conditions at the Site that may present an imminent and substantial endangerment to public health, welfare and the environment caused by the disposal of Waste Materials at the Site and to protect public health, welfare and the environment from any releases or threatened releases of Waste Material from the Site through (a) the investigation of conditions at the Site, (b) the selection, design, construction, and implementation of response actions necessary to close or otherwise remediate the Site and to achieve applicable or relevant and appropriate requirements ("ARARs") and other performance standards described in the ROW, and in any ROD or other response action decision documents issued by EPA, as appropriate and necessary, pursuant to this Consent Decree, in order to complete remediation of the entire Site in accordance with the MCP and (c) monitoring, operation and maintenance of these response actions for a specified period of time after completion;

(2) provide comprehensive and integrated arrangements for funding and performance of the Work to be performed at the Site pursuant to this Consent Decree including, but not limited to, collecting funds from other potentially responsible parties to pay for certain portions of the Work; and

(3) except as noted in Section XXV, (Covenants Not To Sue/Reservation of Rights), provide a settlement of any and all potential civil claims among and between the Settling Defendants

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and the United States in connection with the Casmalia Site; and provide the Settling Defendants with statutory protection against claims as provided herein.

B. The CERCLA framework provided by this Consent Decree incorporates the requirements of other federal and State laws through the identification and enforcement of ARARs as an integral part of the remedy for the Site. Because the Site was operated as an interim status hazardous waste management facility, potential ARARs will include RCRA closure and corrective action requirements. Accordingly, this Consent Decree shall govern all activities that take place on the Site after entry of this Consent Decree, and shall upon entry supersede or take precedence over all State or local enforcement actions or orders issued against the Settling Defendants or Third Parties who resolve their liabilities with the Parties with respect to the Site during the pendency of this Consent Decree, except for any State or local permits or other authorizations issued in accordance with applicable law for response activities undertaken pursuant to this Consent Decree that are not conducted entirely on the Site.

C. The Work to be performed under this Consent Decree will provide a comprehensive remedy for the Site that will address existing and anticipated future Site conditions. Based upon presently existing data, the RCRA operating and closure history of the Site, and the long-term response actions taken at similar large landfill sites, EPA believes that the likely Site remedy will consist of controlling the migration of contaminated groundwater and containing the contaminated land masses. In

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1 order to assure that the remedy provides adequate protection of
 2 human health and the environment and waste ARARs and other
 3 performance standards set forth in this Consent Decree, this
 4 early assessment shall be subject to confirmation by EPA
 5 following completion of the early response actions, the RE/CA and
 6 the RI/FS to be performed for the entire Site in accordance with
 7 this Consent Decree. In accordance with the NCP, EPA's decision
 8 concerning the final Site remedy will be set forth in a ROD taken
 9 together, if appropriate and necessary, with other EPA decision
 10 documents.

11 D. The Parties acknowledge that the Settling Defendants
 12 are entering this Consent Decree and undertaking to perform the
 13 Work as persons who have arranged for disposal of Waste Materials
 14 at the Site, and neither entry into this Consent Decree nor
 15 performance of all or part of the Work at the Site shall be
 16 deemed to grant legal possession and control of the Site to
 17 Settling Defendants or cause Settling Defendants to be deemed
 18 owners or operators of the Site.

19 E. The State by agreement with EPA turned over the lead
 20 agency responsibility for the management of the
 21 closure/remediation of the Casamalia Site to EPA, notwithstanding
 22 that, with certain exceptions, the State is authorized to
 23 implement the federal RCRA program in lieu of EPA. EPA, after
 24 consultation with the State, determined that the best means to
 25 implement such closure/remediation was to establish a
 26 comprehensive regulatory and enforcement program for the Site as
 27 provided by this Consent Decree. The Parties intend that the
 28 regulatory framework and relationship between EPA and the State

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1 be managed as provided herein. The State of California, pursuant
 2 to CERCLA § 121(f)(1)(F), was given notice of EPA's negotiations
 3 with the Settling Defendants and was provided with opportunities
 4 to participate in such negotiations and be a Party to this
 5 Consent Decree, to among other things, identify the rights and
 6 responsibilities between EPA and the State. Although the State
 7 declined to become a Party to the Consent Decree, the State has
 8 been consulted on the technical approach detailed in the ROW and
 9 the management of the Site pursuant to the approach in this
 10 Consent Decree. The State has indicated its support of this
 11 Consent Decree's reliance upon a CERCLA framework to implement a
 12 comprehensive response to conditions at the Site and EPA's role
 13 as the lead governmental regulatory agency.

14 F. The preservation of the RCRA Trust Fund for use toward
 15 10-Year O&M Work at the Site is an integral provision of this
 16 Consent Decree. It is intended that this Consent Decree shall
 17 govern the management and disbursement of funds from the RCRA
 18 Trust Fund. EPA agrees not to request or to otherwise use the
 19 RCRA Trust Fund for anything other than 10-Year O&M Work. This
 20 obligation shall be effective upon lodging of this Consent
 21 Decree. The Parties agree to work cooperatively to ensure that
 22 the RCRA Trust Fund is transferred to the Escrow Account and
 23 managed in a manner consistent with the terms of this Consent
 24 Decree.

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VII. WORK TO BE PERFORMED

A. Phase I Work

1. Settling Defendants shall perform, at their expense and without limitation as to its cost or duration, the Phase I Work. The Phase I Work shall be performed in accordance with this Consent Decree, including, but not limited to, the SOW attached at Appendix A; all standards, plans, specifications, and schedules set forth in or developed pursuant to this Consent Decree and the SOW; and any modifications or amendments thereto made pursuant to the terms of this Consent Decree.

3. Except as provided in Section XIV, Paragraphs C. and D. (Certifications of Completion), Settling Defendants' obligation to perform and pay for Phase I Work shall cease as of the effective date of EPA's written acceptance of the Completion of Phase I Work Report (Section 5.4.) of the SOW. Pursuant to Section XIV. (Certifications of Completion), the following Elements or Components of Work shall cease to be Phase I Work obligations and become Phase II Work as follows: (a) the Short-Term and Interim Collection/Treatment/ Disposal of Contaminated Liquids Components of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the Phase I Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work," as set forth in Section 5.4. of the SOW; (b) the Routine Site Maintenance Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Site Maintenance Element of Work," as set forth in Section 5.4. of the

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SOW; (c) the Routine Groundwater Monitoring Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Groundwater Monitoring Element of Work," as set forth in Section 5.4. of the SOW; (d) the Community Relations Support Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Community Relations Support Element of Work," as set forth in Section 5.4. of the SOW.

3. Settling Defendants shall begin performance of the Work, as set forth in the SOW, including its schedules, at Appendix A, no later than seven (7) days after lodging of this Consent Decree. Settling Defendants shall not, however, be required to commence construction of any permanent facilities until the Consent Decree has been entered by the Court or unless such construction is agreed to by EPA and the Settling Defendants. In the event that the Consent Decree is not entered by the District Court within twelve (12) months from the date of its lodging, the Settling Defendants' obligation to perform or to finance any Work prior to entry of this Consent Decree shall terminate, at the Settling Defendants' option, until the date of entry of this Consent Decree by the District Court. Any delay in the commencement of construction of permanent facilities or in the implementation of other tasks, activities, and obligations caused by a delay in the entry of the Consent Decree shall extend, pro tanto, the dates in the schedules under Section 5.0. of the SOW.

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B. Phase II Work

1. The Settling Defendants shall perform Phase II Work, not otherwise performed by Third Parties, using monies received from the Cashout Settlement(s); from actions, claims, settlements or other efforts pursuant to Section XXIII.

(Coordinated Enforcement Recovery); and/or from other sources not precluded by this Consent Decree. Settling Defendants shall not be obligated under the terms of this Consent Decree to pay for any Phase II Work, except that Settling Defendants shall pay their Administrative Costs associated with and relating to the Phase II Work and shall not be entitled to withdraw or use funds from the Casamalia Consent Decree Escrow Account to pay these Costs. Nothing in this Paragraph B. shall be construed to preclude the assessment of stipulated penalties against, or payment of stipulated penalties by, the Settling Defendants for violations related to Phase II Work as provided under Section XXII. (Stipulated Penalties).

2. The detailed scope of the Elements and Components of Phase II Work shall be determined in accordance with this Consent Decree and the SOW. The full scope of response actions associated with the Phase II Work shall be set forth by EPA in an EE/CA Action Memorandum or other EPA response action decision document, after completion of the EE/CA Component of Work at Section 2.9.2. of the SOW, and a ROD, after completion of the RI/FS Component of Work at Section 2.10.2. of the SOW, which taken together and with other response action decision documents, as appropriate and necessary, will determine the final remedy for the Site. Settling Defendants shall perform Phase II Work in

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accordance with this Consent Decree, including, but not limited to, the SOW attached at Appendix A, all applicable standards, plans, specifications, and schedules set forth in or developed pursuant to this Consent Decree and the SOW; any applicable modifications or amendments thereto made pursuant to the terms of this Consent Decree; and any future EPA ROD or other response action decision document(s), as appropriate and necessary.

3. Settling Defendants are not obligated to begin Phase II Work until \$3 million is available for performance of the Phase II Work.

4. Settling Defendants are not obligated to perform Phase II Work absent the receipt of sufficient funds. However, in the event of insufficient funds, Settling Defendants shall perform that Work that can be performed with available funds pursuant to the determination in Section 1.3.10. of the SOW. The Settling Defendants shall be authorized to withdraw advance payments from the Phase II Work Account as set forth below to fund the Phase II Work.

a. The Escrow Agreement shall instruct the Escrow Manager to disburse money from the Phase II Work Account to the Settling Defendants quarterly as authorized by the Annualized Phase II Work Budget Estimate, including updates thereto, required to be submitted by the Settling Defendants pursuant to Section XVII. Paragraph J.3. (Escrow Accounts/Financing The Work) and Sections 3.17., 4.1.1., and 3.4. of the SOW. Although any quarterly payment to the Settling Defendants may exceed the budgeted amount for that quarter after notice to EPA, the Escrow Agreement shall instruct the Escrow

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1 Manager not to disburse money over four consecutive quarters that
2 is in excess of the Annualized Phase II Work Budget Estimate in
3 the absence of written approval by EPA.
4 If the Settling Defendants request money from the Phase
5 II Work Account in excess of the Annualized Phase II Work Budget
6 Estimate, the Settling Defendants shall submit to EPA for
7 approval justification of the need for funds in excess of such
8 budget and steps to be taken to bring the project back within
9 budget. If possible, and to minimize future cost overruns,
10 Settling Defendants shall maintain records accounting for all
11 Work expenditures paid for by money from the Escrow Account and
12 detailing site operations related to Escrow Account expenditures.
13 EPA shall be entitled, upon reasonable notice to the Settling
14 Defendants, to audit Settling Defendants' accounting and
15 operations records related to the Escrow Account expenditures.
16 b. If insufficient money is available in the
17 Phase II Work Account to fund the Work pursuant to Paragraph
18 4.2., above, Settling Defendants shall notify EPA as specified in
19 Section 5.4. of the SOM of the unavailability of funds. In the
20 event that the insufficient funding results in suspension of
21 performance of the unfunded Phase II Work, Settling Defendants
22 shall re-start the Work as soon as practicable after such
23 additional funds become available. Settling Defendants shall not
24 unreasonably delay re-starting the Work under this Paragraph.
25 5. Settling Defendants' obligations under this
26 Consent Decree to perform Phase II Work will cease on the
27 effective date, as provided in Section XIV, (Certifications of
28 Completion), for the Phase II Work.

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C. Failure to Perform

1 In the event Settling Defendants fail to perform all or
2 portions of the Phase I or Phase II Work as required, the
3 Settling Defendants shall be subject to stipulated penalties as
4 set forth in Section XXII, Paragraph D. (Stipulated Penalties).
5 If EPA performs all or a portion of the Work because of Settling
6 Defendants' unauthorized failure to perform, monies in the
7 appropriate Account of the Escrow Account shall be paid to EPA
8 upon demand into a Casamalia Site-specific special account (a) to
9 be used to reimburse EPA for any Work performed or (b) to be used
10 by EPA to perform the Work. If the Settling Defendants' failure
11 to perform Work is the subject of a dispute pursuant to Section
12 XXI. (Dispute Resolution), the failure to perform shall not be
13 considered unauthorized until the dispute is resolved and the
14 Settling Defendants' position is rejected, unless Settling
15 Defendants' specific work stoppage results in an imminent and
16 substantial endangerment to public health, welfare or the
17 environment beyond the general allegations in the complaint,
18 necessitating response action, as determined by EPA, in which
19 case, advance payments or reimbursements requested by EPA shall
20 be payable from the appropriate Account of the Escrow Account for
21 such response action.
22 D. 30-Year Operation and Maintenance
23 1. The obligations to perform and to oversee the 30-
24 Year O&M Work are not resolved by this Consent Decree.
25 2. The specific tasks and activities to be performed
26 during the 30-Year O&M Work are not specified under the SOM or
27 this Consent Decree.

E. Post-30 Year Operation and Maintenance.

1. The duration of, and the obligations to perform and oversee, Post-30 Year O&M Work are not resolved by this Consent Decree.

2. The specific tasks and activities to be performed during the Post-30 Year O&M Work are not specified under the SOM or this Consent Decree.

F. Oversight

The United States will oversee the Settling Defendants' performance of the Work until Certification of Completion of Phase II Work. The designation of the lead agency for the governmental/regulatory oversight of the 30-Year and Post-30 Year O&M Work is not resolved by this Consent Decree, but is subject to resolution as set forth in Paragraph C. of Section XXIV. (Lead Agency).

G. General Provisions

1. Notwithstanding any approvals that may be granted by the United States or other governmental entities, the Settling Defendants shall not be relieved of any liability arising from or relating to their acts or omissions or the acts or omissions of any of their contractors, subcontractors, or any other person acting on their behalf in the performance of the Work or their failure to perform or complete the Work.

2. The SOM, any modifications to the SOM, and any future EPA ROD or other EPA response action decision documents related to the Casella site are hereby incorporated by reference and made a part of this Consent Decree and are enforceable hereunder.

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3. Neither the SOM, the plans, any standards, specifications, and schedules, nor any approvals, permits or other permissions that may be granted by EPA related to this Consent Decree constitute a warranty or representation of any kind by the United States that the SOM, plans, standards, specifications, schedules, or ROD or other EPA response action decision documents, when implemented, will achieve the Performance Standards established or to be established, and shall not foreclose the United States from seeking performance of all terms and conditions of this Consent Decree or any EPA ROD or other EPA response action decision, the enforcement of which is not otherwise precluded by this Consent Decree. The Work performed by the Settling Defendants pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

4. Except as otherwise permitted by law and as approved by EPA, any facilities constructed or put in place under the terms of this Consent Decree shall not be used to treat Waste Materials other than those associated with the Site.

5. Settling Defendants shall be jointly and severally responsible for the performance of the Settling Defendants' obligations under this Consent Decree. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the Work, tasks and activities provided for under this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

H. Compliance With Applicable Laws

All Work, tasks and activities undertaken by Settling

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1 Defendants pursuant to this Consent Decree shall be performed in
 2 accordance with the requirements of all applicable federal and
 3 state laws and regulations. Except as allowed by CERCLA and the
 4 MCP, Settling Defendants shall also comply with applicable or
 5 relevant and appropriate requirements ("ARAR") under federal
 6 environmental or state environmental or facility siting laws as
 7 determined by EPA pursuant to this Consent Decree and as
 8 authorized by law. Only those state standards that are
 9 promulgated, are identified by the State in a timely manner, and
 10 are more stringent than federal requirements may be applicable or
 11 relevant and appropriate. The Court finds that the Work and
 12 activities conducted pursuant to this Consent Decree, if approved
 13 by EPA, shall be considered to be consistent with the applicable
 14 requirements of CERCLA, RCRA, and the MCP.

15 1. Exemption

16 1. As provided in Section 121(e) of CERCLA and
 17 § 300.5 of the MCP, no Federal, State or local permit shall be
 18 required for any portion of the Work conducted entirely on-site.
 19 For purposes of this Consent Decree, the term "on-site" means the
 20 areal extent of contamination and all suitable areas in very
 21 close proximity to the contamination necessary for implementation
 22 of the response action. Where any portion of the Work requires a
 23 Federal or State permit or authorization, Settling Defendants
 24 shall submit timely and complete applications and take all other
 25 actions necessary to obtain all such permits or authorizations.
 26 Settling Defendants or their designee shall be required to obtain
 27 and hold any permits needed for implementation of the Phase I and
 28 Phase II Work.

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2. The Settling Defendants may seek relief under the
 provisions of Section 121. (Force Majeure) of this Consent Decree
 for any delay in the performance of the Work resulting from a
 failure to obtain, or a delay in obtaining, any permit required
 for the Work.

3. This Consent Decree is not, and shall not be
 construed to be, a permit issued pursuant to any federal or state
 statute or regulation.

3. Selection of Work Contractor

1. All aspects of the Phase I and Phase II Work to be
 performed by Settling Defendants pursuant to this Consent Decree
 shall be under the direction and supervision of the Settling
 Defendants' Supervising Contractor, the selection of which shall
 be subject to disapproval by EPA. Within five (5) days after the
 lodging of this Consent Decree, and at any time Settling
 Defendants propose to change a Supervising Contractor, Settling
 Defendants shall notify EPA in writing of the name, title, and
 qualifications of any contractor proposed to be the Supervising
 Contractor. Unless EPA disapproves of the proposed Supervising
 Contractor pursuant to Paragraph 3.2., below, Settling Defendants
 may proceed.

2. If EPA disapproves a proposed Supervising
 Contractor, EPA will notify Settling Defendants in writing within
 seven (7) days of receipt of Settling Defendants' written
 notification to EPA in Paragraph 3.1., above. Within thirty (30)
 days of receipt of EPA's disapproval, Settling Defendants shall
 notify EPA of the name and qualifications of the proposed
 replacement Supervising Contractor.

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3. If EPA disapproves of the proposed replacement Supervising Contractor and such disapproval prevents the Settling Defendants from meeting one or more deadlines in a plan, Deliverable, or other written submission approved by EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XX. (Force Majeure).

VIII. ADDITIONAL RESPONSE ACTIONS

A. With respect to the Phase II Work, if EPA determines that response actions in addition to or modifying the Work specified in the ROD or other EPA decision document(s) and/or in Deliverables developed pursuant to the ROD or other EPA decision document(s) are necessary to achieve and/or maintain the Performance Standards or to carry out and/or maintain the effectiveness of the remedy set forth in a ROD or other EPA decision document(s), EPA may require that such additional or modified response action (which may include the submission of additional or modified Plans) be incorporated into the BOM and/or such Deliverables. Unless the additional or modified response actions are performed by Third Parties, Settling Defendants shall be required to complete as Phase II Work the additional or modified response actions in accordance with plans, specifications, and schedules approved or established by EPA pursuant to this Consent Decree. Provided, however, that additional or modified response actions may only be required pursuant to this Paragraph to the extent that they are consistent with the scope of the remedy selected in the ROD or other EPA decision document(s), as applicable.

B. If Settling Defendants object to any additional or modified response action required by EPA pursuant to Paragraph A., above, they may seek dispute resolution pursuant to Section XXI. Paragraph D. (Dispute Resolution). The BOM and/or related Deliverables shall be modified in accordance with final resolution of the dispute, and Settling Defendants shall then perform the additional or modified response actions in accordance

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with Paragraph A., above.

C. Nothing in this Section shall be construed to limit EPA's authority to require performance of additional or modified response actions as otherwise provided in this Consent Decree.

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IX. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. The Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with Quality Assurance and Project Plans and Sampling Plans developed pursuant to Sections 3.0. and 5.0. of the SOW.

B. In accordance with the schedule in the SOW Section 5.0., Settling Defendants shall submit for EPA's approval the Quality Assurance Project Plans ("QAPPs"), and any addenda thereto, that are consistent with the SOW, the MCP, and applicable guidance documents.

C. If relevant to the proceeding, validated sampling data generated in accordance with the QAPPs and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

D. Settling Defendants shall make it a requirement of their contract(s) with laboratories for work performed pursuant to this Consent Decree that EPA be allowed access to the laboratories during normal business hours. In addition, Settling Defendants shall require such laboratories to analyze all samples submitted in connection with the Work pursuant to the approved QAPPs, and any addenda thereto, for quality assurance monitoring and to perform all analyses required in connection with the Work according to accepted EPA methods. Settling Defendants shall require all laboratories they use for analysis of samples taken pursuant to this Consent Decree to participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall nonetheless be responsible for the Work pursuant to this Section being in

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1 compliance with this Consent Decree.

2 E. Upon request, the Settling Defendants shall allow split
3 or duplicate samples to be taken by EPA or its authorized
4 representatives. In addition, EPA shall have the right to take
5 any additional samples that EPA deems necessary. Upon request,
6 EPA shall allow the Settling Defendants to take split or
7 duplicate samples of any samples taken as part of EPA's oversight
8 of the performance of the Phase I and Phase II Work. Settling
9 Defendants and EPA shall notify the other not less than twenty-
10 eight (28) days in advance of any sample collection activity
11 unless shorter notice is agreed to by them.

12 F. Unless specified otherwise in an approved Deliverable
13 or other written submission required by this Consent Decree,
14 Settling Defendants shall submit to EPA three (3) copies, in
15 accordance with the SWM, of the results of all sampling and/or
16 tests or other data obtained or generated by or on behalf of
17 Settling Defendants with respect to the implementation of this
18 Consent Decree. EPA shall provide to Settling Defendants copies
19 of its results from any split or duplicate samples taken pursuant
20 to Paragraph E., above.

21 G. Notwithstanding any provision of this Consent Decree,
22 the United States hereby retains all of its information gathering
23 and inspection authorities and rights, including enforcement
24 actions related thereto, under CERCLA, RCRA and any other
25 applicable statutes or regulations.
26
27
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X. ELITE ACCESS

1 A. For the duration of the Settling Defendants'
2 obligations to perform the Phase I and Phase II Work, to the
3 extent that the Site or any other property to which access is
4 required for the implementation of this Consent Decree is owned
5 or controlled by persons other than those bound by this Consent
6 Decree, the Settling Defendants shall use best efforts to secure
7 from such persons access for Settling Defendants, as well as for
8 the United States and its representatives including, but not
9 limited to, their contractors, as necessary to effectuate this
10 Consent Decree, including but not limited to access for the
11 following activities:

- 12 1. oversight of the Work;
- 13 2. verifying any data or information submitted to the
14 United States;
- 15 3. conducting investigations relating to contamination
16 at or near the Site;
- 17 4. obtaining samples;
- 18 5. assessing the need for, planning, or implementing
19 additional response actions at or near the Site;
- 20 6. inspecting and copying records, operating logs,
21 contracts, or other documents maintained or generated by Settling
22 Defendants or their agents, consistent with Section XXVII,
23 (Access to Information); and
- 24 7. assessing Settling Defendants' compliance with
25 this Consent Decree.

26 B. If any access required to complete the Phase I or Phase
27 II Work is not obtained within forty-five (45) days of the date
28

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of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary. Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access. Response costs incurred by the United States to assist the Settling Defendants to obtain access shall be added to the United States' Final Post Response Costs Summary total and be reimbursed in accordance with the terms of Section XVIII. (Cost Estimates and Fund Transfers). Costs incurred by the Settling Defendants to obtain access for Phase II Work shall be considered Phase II Work costs.

C. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

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XI. REPORTING REQUIREMENTS

A. Certain reporting required of the Settling Defendants' pursuant to this Consent Decree is specified in the SOM. Unless otherwise specified in the SOM, a submitted and approved Deliverable under the SOM, or in another writing by EPA, Settling Defendants shall submit to EPA three (3) copies of all Deliverables required to be submitted by the SOM, in accordance with the schedules set forth in Section 5.0. of the SOM. One (1) additional copy of final Deliverables shall be sent to public information repositories as specified by EPA.

B. If an event occurs during performance of the Phase I and Phase II Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right to Know Act (EPCRA), Settling Defendants shall, within 24 hours after the on-set of such event, orally notify the EPA Project Coordinator. In the event that the EPA Project Coordinator is unavailable, the Settling Defendants shall notify the Emergency Response Section, Region IX, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 104.

C. Within twenty (20) days after the on-set of such an event, Settling Defendants shall furnish to the United States a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days after the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken

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1 in response thereto unless all such actions were previously
 2 reported.
 3 D. All Deliverables and other submissions by Settling
 4 Defendants to EPA which purport to document Settling Defendants'
 5 compliance with the terms of this Consent Decree shall be signed
 6 by an authorized representative of the Settling Defendants.
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XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

1 A. After submittal of any Deliverable or other submission
 2 that requires EPA approval pursuant to this Consent Decree, EPA
 3 shall: (1) approve in whole or in part, the submission; (2)
 4 approve the submission upon specified conditions; (3) disapprove,
 5 in whole or in part, the submission, directing that the Settling
 6 Defendants modify the submission; or (4) any combination of the
 7 above.
 8

9 B. Following receipt of EPA's approval or approval upon
 10 conditions, pursuant to Paragraph A.(1) or (2), above, Settling
 11 Defendants shall proceed to take any action required by the
 12 Deliverable or other submission, as approved by EPA, subject only
 13 to their right to invoke the dispute resolution procedures set
 14 forth in Section XII. (Dispute Resolution) with respect to the
 15 modifications required or conditions imposed by EPA. Nothing in
 16 this Paragraph B., shall require the Settling Defendants to
 17 perform any work not otherwise required pursuant to this Consent
 18 Decree.
 19

20 C. Following receipt of EPA's notice of disapproval
 21 pursuant to Paragraph A.(3), above, Settling Defendants shall,
 22 within fourteen (14) days, or within such other period specified
 23 by EPA in the EOM or in the notice, correct the deficiencies and
 24 resubmit the Deliverable or other submission for approval.
 25 Notwithstanding the receipt of a notice of disapproval pursuant
 26 to Paragraph A.(3), above, Settling Defendants shall proceed, at
 27 the direction of EPA, to take any action required by any non-
 28 deficient portion of the submission, as long as such action is
 not precluded or rendered impracticable by the disapproval

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1 portion. Implementation of any non-deficient portion of a
 2 submission shall not relieve Settling Defendants of any liability
 3 for stipulated penalties under Section XXI. (Stipulated
 4 Penalties).

5 D. No stipulated penalties shall accrue during the first
 6 opportunity to cure a Deliverable's or submission's
 7 deficiency(ies). In the event that a resubmitted Deliverable or
 8 other submission, or portion thereof, is again disapproved by
 9 EPA, stipulated penalties shall begin to accrue from the date of
 10 the resubmittal, and EPA may again require the Settling
 11 Defendants to correct the deficiencies, in accordance with the
 12 preceding Paragraphs. EPA also retains the right to amend or
 13 develop the Deliverable or other submission required under this
 14 Consent Decree to correct the deficiency(ies).

15 E. If upon resubmission, a Deliverable or other submission
 16 is disapproved by EPA due to a material defect and the Settling
 17 Defendants fail to cure the defect, Settling Defendants shall be
 18 deemed to have failed to submit such Deliverable or other
 19 submission timely and adequately subject only to the Settling
 20 Defendants' invocation of the dispute resolution procedures set
 21 forth in Section XXI. (Dispute Resolution). The provisions of
 22 Section XXI. (Dispute Resolution) and Section XXII. (Stipulated
 23 Penalties) shall govern the implementation of the Phase I and
 24 Phase II Work and accrual and payment of any stipulated penalties
 25 during Dispute Resolution. If EPA's disapproval or modification
 26 of a Deliverable or other submission is upheld, stipulated
 27 penalties shall accrue for such violation from the date of the
 28 resubmittal, as provided in Paragraph D., above.

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1 F. All Deliverables or other submissions required to be
 2 submitted to EPA under this Consent Decree shall, upon approval
 3 by EPA, be enforceable under this Consent Decree. In the event
 4 EPA approves or requires Settling Defendants to modify a portion
 5 of a Deliverable or other submission required under this Consent
 6 Decree, the approved or modified portion shall be enforceable
 7 under this Consent Decree.

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XIII. PROJECT COORDINATORS

A. Within thirty (30) days after lodging of this Consent Decree, the Settling Defendants will designate two Project Coordinators. The specific elements of Work to be managed by each Project Coordinator are subject to EPA's approval. After two (2) years from the date of entry of the Consent Decree, Settling Defendants may propose that two (2) separate Project Coordinators are no longer necessary. Within five (5) days after selection of, and at any time Settling Defendants propose to change, a Project Coordinator, Settling Defendants shall notify EPA, in writing, of the name, title, qualifications, address and telephone number of the proposed Project Coordinator(s). Unless EPA disapproves of a proposed Project Coordinator pursuant to Paragraph B., below, the Settling Defendants may proceed.

B. If EPA disapproves a proposed Project Coordinator, EPA will notify Settling Defendants in writing within seven (7) days after receipt of Settling Defendants' written notification to EPA in Paragraph A., above. Within thirty (30) days after receipt of EPA's disapproval, Settling Defendants shall notify EPA of the name and qualifications of the proposed replacement Project Coordinator.

C. If EPA disapproves of the proposed replacement Project Coordinator and such disapproval prevents the Settling Defendants from meeting one or more deadlines in a Plan, Deliverable, or other written submission approved by EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XX. (Force Majeure).

D. Within thirty (30) days after lodging of this Consent

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Decree, EPA will notify Settling Defendants, in writing, of the name, address, and telephone number of EPA's Project Coordinator(s), if different from the person identified in Section XIX. (Notices and Submissions).

E. If EPA changes a Project Coordinator, the identity of the successor will be given to the Settling Defendants at least five (5) Working Days before the change occurs, unless impracticable, but in no event later than the actual day the change becomes effective. A verbal notification will be followed in writing.

F. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any Work undertaken pursuant to this Consent Decree. EPA's Project Coordinators shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinators shall have authority consistent with the National Contingency Plan to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

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XIV. CERTIFICATIONS OF COMPLETION

A. EPA shall certify completion of each of the following:

- (1) the Phase I portion of the Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work, and the Phase I portion of the Routine Site Maintenance, Routine Groundwater Monitoring, and Community Relations Support Elements of Work, specified in Section 1.2.13. of the SOM ("Obligations"); (2) all Phase I Work; (3) all Phase II Work (i.e., including the OWM Base Period Work).

B. After complete performance of all tasks and activities required to complete a Phase of Work or Obligation under a Phase of Work specified in Paragraph A., above, Settling Defendants shall submit to EPA a Completion of Work Obligation Report or Completion of Work Phase Report as specified in Sections 3.0. and 5.0. of the SOM. Written acceptance of each such Report by EPA shall be deemed to be EPA's certification that the Phase of Work or Obligation has been fully performed in accordance with this Consent Decree. The effective date of each such certification shall be the date EPA mails, or otherwise transmits, its written acceptance to Settling Defendants.

C. If EPA determines that the relevant Phase of Work or Obligation, or any portion thereof, has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the tasks and activities that must be undertaken to complete the Phase of Work or Obligation. Settling Defendants shall perform all tasks and activities described in the notice, subject to their right to invoke the dispute resolution procedures set forth in Section XXI. (Dispute

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Resolution). During the period of EPA's determination of whether the Phase I Work, pursuant to Paragraph A. (1) or A. (2), above, has been completed in accordance with this Consent Decree, Settling Defendants shall perform the continuing Work under the relevant Element or Component of Work as Phase II Work. Provided, however, if the Phase I Obligation or Work is not accepted by EPA as complete, Settling Defendants shall reimburse any amounts drawn from the Escrow Account and expended after the date of Settling Defendants' submittal of their completion report to perform the tasks and activities to complete the Phase I Obligation or Work.

D. 1. The Final Cost Estimate, pursuant to Section XVIII. Paragraph A.3. of the Consent Decree, and the Cost Estimates and Funding Limits Element of Work at Section 2.15. of the SOM, and the Waste Database Support and Other Assistance Element of Work at Section 2.14. of the SOM are Phase I Work, but their completion shall not be a condition precedent to the certification of completion of Phase I Work. Provided, however, that notwithstanding the certification of completion of Phase I Work pursuant to this Section XIV., the Settling Defendants shall remain obligated to pay for, perform, and complete the Final Cost Estimate and the Waste Database Support and Other Assistance Element of Work in accordance with Sections 2.15. and 2.14. of the SOM, respectively.

2. The pendency of any dispute on the Final Cost Estimate shall not prevent EPA from certifying completion of Phase II Work, provided EPA has accepted in writing, pursuant to Section 5.4. of the SOM, the Final Cost Estimate.

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E. EPA shall not unreasonably delay taking any action or making any decision under this Section.

XV. EMERGENCY RESPONSE

A. If any action or occurrence during the performance of Phase I or Phase II Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 8., below, and at their expense if such situation occurs during Phase I Work, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator(s). If that person is, or those persons are, unavailable, then the Settling Defendants shall notify the EPA Emergency Response Section, Region IX. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized officer, and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to the GOM. In the event that Settling Defendants fail to take appropriate response action as required by this Section, EPA or its designee may take such action instead, and EPA reserves any rights it may have to seek to recover its response costs from Settling Defendants in this or another action, and Settling Defendants reserve any rights they may have to oppose such action.

8. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste

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1 Material on, at, or from the site.

XVI. INDEMNIFICATION AND INSURANCE

2 A. Indemnification by Settling Defendants. The United
 3 State assumes no liability by entering into this Consent Decree
 4 or by virtue of any designation of Settling Defendants as EPA's
 5 authorized representatives under Section 104(e) of CERCLA.
 6 Settling Defendants shall indemnify, save and hold harmless the
 7 United States and its officials, agents, employees, contractors,
 8 subcontractors, or representatives for or from any and all claims
 9 or causes of action arising from, or on account of, acts or
 10 omissions of Settling Defendants their officers, directors,
 11 employees, agents, successors, assigns, contractors,
 12 subcontractors, or any persons acting on their behalf or under
 13 their control, in carrying out any activities pursuant to this
 14 Consent Decree, including, but not limited to, any claims arising
 15 from any designation of Settling Defendants as EPA's authorized
 16 representatives under Section 104(e) of CERCLA. Further,
 17 Settling Defendants agree to pay the United States all reasonable
 18 expenditures it incurs for litigation and settlement arising
 19 from, or on account of, claims made against the United States
 20 based on acts or omissions of Settling Defendants, their
 21 officers, directors, employees, agents, contractors,
 22 subcontractors, or any persons acting on their behalf or under
 23 their control, in carrying out activities pursuant to this
 24 Consent Decree. The United States shall not be held out as a
 25 party to any contract entered into by or on behalf of Settling
 26 Defendants in carrying out work or activities pursuant to this
 27 Consent Decree. Neither the Settling Defendants nor any such
 28 contractors shall be considered an agent of the United States.

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1 Nothing in this Section shall result in an indemnification of the
 2 United States for actions, omissions or for conditions resulting
 3 from the negligence of the United States or its authorized
 4 representatives.

5 B. Subject to Section VII, Paragraph B. (Work To Be
 6 Performed), the Settling Defendants waive all claims against the
 7 United States for damages or reimbursement or for set-off of any
 8 payments made or to be made to the United States, arising from or
 9 on account of any contract, agreement, or arrangement between any
 10 one or more of the Settling Defendants and any person for
 11 performance of the Work, including, but not limited to, claims on
 12 account of construction delays. In addition, the Settling
 13 Defendants shall indemnify and hold harmless the United States
 14 with respect to any and all claims for damages or reimbursement
 15 arising from or on account of any contract, agreement, or
 16 arrangement between any one or more of Settling Defendants and
 17 any person for performance of the Work, including, but not
 18 limited to, claims on account of construction delays.

19 C. No later than fifteen (15) days before commencing any
 20 on-site Work, Settling Defendants shall secure, and shall
 21 maintain until the first anniversary of EPA's Certification of
 22 Completion of Phase II Work pursuant to Section XIV.
 23 (Certifications of Completion), comprehensive general liability
 24 insurance and automobile insurance with limits of \$1 million
 25 dollars per occurrence, combined single limit, naming as
 26 additional insured the United States. In addition, for the
 27 duration of their obligations under this Consent Decree, Settling
 28 Defendants shall satisfy, or shall require that their contractors

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1 or subcontractors satisfy, all applicable laws and regulations
 2 regarding the provision of worker's compensation insurance for
 3 all persons performing the Work on behalf of Settling Defendants
 4 in furtherance of this Consent Decree. Prior to commencement of
 5 the Work under this Consent Decree, Settling Defendants shall
 6 provide to EPA certificates of such insurance and a copy of each
 7 insurance policy. Settling Defendants shall resubmit such
 8 certificates and copies of policies each year on the anniversary
 9 of the effective date of this Consent Decree. Settling
 10 Defendants may demonstrate by evidence satisfactory to EPA that
 11 they, or any contractor or subcontractor, maintain insurance or
 12 other protection equivalent to that described above. Settling
 13 Defendants need provide only that portion of the insurance
 14 described above that is not maintained by the contractor or
 15 subcontractor. The United States must seek recovery under this
 16 Section from Settling Defendants' insurance policies as an
 17 additional insured prior to seeking compensation under the
 18 Indemnities set forth in Paragraph A. of this Section.

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XVII. ESCROW ACCOUNTS/FINANCING THE WORK

A. Settling Defendants shall establish the "Casamella Consent Decree Escrow Account" ("Escrow Account") no later than ninety (90) days after the date of entry of this Consent Decree. Settling Defendants shall provide a copy of the Escrow Agreement establishing the Escrow Account to EPA as soon as possible, and in no event more than seven (7) days thereafter, for approval primarily to ensure that the escrowed funds will be handled as set forth by this Consent Decree. EPA does not, through any approval of the terms of the Escrow Account, guarantee the sufficiency of the funds in the Escrow Account established by this Section for performance of the Work.

B. The Escrow Account shall have six (6) interest-bearing Accounts: (a) "Cash Account"; (b) "Phase II Account"; (c) "30-Year O&M Account"; (d) "Past Response Costs Account"; (e) "Post-30 Year O&M Account"; and (f) "Support Costs Account." The Phase II Account shall have two Sub-Accounts, the "Phase II Future Response Costs Sub-Account" and the "Phase II Work Sub-Account." The 30-Year O&M Account shall have two Sub-Accounts, the "30-Year O&M Work Sub-Account" and the "30-Year O&M Oversight Sub-Account." The 30-Year O&M Work Sub-Account shall include a segregated Sub-Account to hold monies transferred from the RCRA Trust Fund to the Escrow Account. The Post-30 Year O&M Account shall have two Sub-Accounts, the "Post-30 Year O&M Work Sub-Account" and the "Post-30 Year O&M Oversight Sub-Account." These Accounts and Sub-Accounts shall be segregated from one another.

C. Unless otherwise provided in this Consent Decree, the Cash Account shall serve as an interim account to hold all funds

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received pursuant to this Consent Decree until those funds are disbursed according to the priorities in this Section and Funding Limits established in Section XVIII. (Cost Estimates and Fund Transfers). The Cash Account shall also hold any excess funds after all other Accounts are fully funded pursuant to Paragraphs 2.1. through 2.7., below, and until any excess is disbursed pursuant to Paragraph 7., below.

D. Except as provided otherwise in Paragraph 1., below, and Section XVIII. (Cost Estimates and Fund Transfers):

1. Money in the Phase II Account shall be used to fund the performance of the Phase II Work and Future Response Costs as specified in Section XIX. Paragraph D. (Reimbursement of Response Costs);

2. The RCRA Trust Fund after transfer to the Escrow Account, all money subject to the transfer limitations in Section XVIII. Paragraphs C.3. and C.3. (Coordinated Enforcement Recovery) and the money in the 30-Year O&M Work Sub-Account shall be used to pay for 30-Year O&M Work.

3. Money in the Post-30 Year O&M Work Sub-Account shall be used to pay for Post 30-Year O&M Work.

4. Money in the 30-Year O&M Oversight Sub-Account and Post-30 Year O&M Oversight Sub-Account shall be used, in accordance with the provisions of Section XXIV. Paragraph C. (Lead Agency), to pay for the costs of governmental/regulatory oversight after Phase II Work is certified complete.

5. The monies to be disbursed from the Cash Account that are attributable to the Past Response Costs Account shall be immediately disbursed to the Hazardous Substance Superfund in

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1 accordance with Section XIX. (Reimbursement of Response Costs) to
 2 reimburse Past Response Costs and Unfunded Future Response Costs
 3 not otherwise recovered.

4 6. Nothing in this Paragraph D. shall preclude other
 5 monies obtained for the Site and not precluded by this Consent
 6 Decree from being used by the United States to finance the Work
 7 or the governmental/regulatory oversight.

8 E. Distribution Priorities and Funding Limits. The Escrow
 9 Agreement shall instruct and authorize the Escrow Manager to
 10 disburse the money in the Cash Account according to the following
 11 distribution priority and subject to the Funding Limits set forth
 12 below, in Section XVIII. Paragraph A. (Cost Estimates and Fund
 13 Transfers).

14 1. When the balance in the Cash Account first reaches
 15 or exceeds \$3 million, the Escrow Manager shall make a deposit of
 16 \$3 million to the Phase II Work Sub-Account. Thereafter the
 17 Escrow Manager shall make quarterly deposits of funds accumulated
 18 in the Cash Account during the previous quarter as follows: (a)
 19 fifty percent (50%) to the Phase II Work Sub-Account and fifty
 20 percent (50%) to the Phase II Future Response Costs Sub-Account
 21 until the Phase II Future Response Costs Sub-Account is filled to
 22 the Funding Limit established by Section XVIII. Paragraph A.1.
 23 (Cost Estimates and Fund Transfers) and then (b) one-hundred
 24 percent (100%) to the Phase II Work Sub-Account until the Phase
 25 II Account is filled to the Initial or Interim Cost Estimate, as
 26 applicable, for Phase II Work.

27 2. After the deposits to the Phase II Account under
 28 Paragraph E.1., above, are complete, the Escrow Manager shall

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1 make quarterly deposits of funds accumulated in the Cash Account
 2 during the preceding quarter as follows: the 30-Year O&M Work
 3 Sub-Account shall be filled until the amount remaining to be
 4 filled equals the Past Response Costs Funding Limit as determined
 5 under Section XIX. Paragraph B.2. (Reimbursement of Response
 6 Costs), unless the amount needed to fill the 30-Year O&M Work
 7 Sub-Account is less than the Past Response Costs Funding Limit,
 8 in which event the Past Response Costs Account shall be filled
 9 until the amount remaining to be filled equals the amount
 10 remaining to be filled in the 30-Year O&M Work Sub-Account.
 11 Except as provided below, the RCRA Trust Fund and monies received
 12 from the Casmalia Entities and/or the State pursuant to Section
 13 XXIII. Paragraphs C.3. and C.3. (Coordinated Enforcement
 14 Recovery) (including accrued interest and income) shall not be
 15 counted toward satisfaction of the 30-Year O&M Work Sub-Account
 16 Funding Limit until after the Interim Cost Estimate becomes
 17 effective and any and all transfers, pursuant to Paragraph B.1.
 18 of Section XVIII. (Cost Estimates and Fund Transfers) have been
 19 made. After the Interim Cost Estimate becomes effective, the
 20 RCRA Trust Fund shall not be counted unless it has been
 21 transferred into the 30-Year O&M Work Sub-Account or is
 22 available, without impediment, for the 30-Year O&M Work. Prior
 23 to the effective date of the Interim Cost Estimate, funds
 24 received from the Casmalia Entities and/or the State pursuant to
 25 Section XXIII. Paragraphs C.3. and C.3. (Coordinated Enforcement
 26 Recovery) (including accrued interest and income) shall be
 27 counted toward satisfaction of the 30-Year O&M Work Sub-Account
 28 Funding Limit upon receipt of such funds in the 30-Year O&M Work

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1 Sub-Account of the Escrow Account only for determining whether a
2 transfer of funds can be made pursuant to Section XVIII,
3 Paragraph B.2. (Cost Estimate and Fund Transfers).
4
5 3. After the deposits under Paragraph E.3., above, are
6 complete, the Escrow Manager shall make quarterly deposits of
7 funds accumulated in the Cash Account during the preceding
8 quarter as follows: fifty percent (50%) to the 30-Year O&M Work
9 Sub-Account and fifty percent (50%) to the Past Response Costs
10 Account until the 30-Year O&M Work-Sub Account is funded to the
11 Initial, Interim, or Final Funding Limit, as applicable, and the
12 Past Response Costs Account is funded to its Funding Limit as
13 determined under Section XIX, Paragraph B. (Reimbursement of
14 Response Costs). Except as provided below, the RCRA Trust Fund
15 and monies received from the Cosmalla Entities and/or the State
16 pursuant to Section XXIII, Paragraphs C.3. and C.3. (Coordinated
17 Enforcement Recovery) (including accrued interest and income)
18 shall not be counted toward satisfaction of the 30-Year O&M Work
19 Sub-Account Funding Limit until after the Interim Cost Estimate
20 becomes effective and any and all transfers, pursuant to
21 Paragraph B.1. of Section XVIII, (Cost Estimates and Fund
22 Transfers) have been made. After the Interim Cost Estimate
23 becomes effective, the RCRA Trust Fund shall not be counted
24 unless it has been transferred into the 30-Year O&M Work Sub-
25 Account or is available, without impediment, for the 30-Year O&M
26 Work. Prior to the effective date of the Interim Cost Estimate,
27 funds received from the Cosmalla Entities and/or the State
28 pursuant to Section XXIII, Paragraphs C.3. and C.3. (Coordinated
29 Enforcement Recovery) (including accrued interest and income)

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shall be counted toward satisfaction of the 30-Year O&M Work Sub-Account Funding Limit upon receipt of such funds in the 30-Year O&M Work Sub-Account of the Escrow Account only for determining whether a transfer of funds can be made pursuant to Section XVIII, Paragraph E.2. (Cost Estimates and Fund Transfers).

4. After the deposits to the 30-Year O&M Work Sub-Account and the Past Response Costs Account under Paragraph E.3., above, are complete, the Escrow Manager shall make quarterly deposits of funds accumulated in the Cash Account during the preceding quarter to the 30-Year O&M Oversight Sub-Account until it is filled to the Initial, Interim, or Final Cost Estimate, for the 30-Year O&M Oversight Funding Limit.

5. After the deposits to the 30-Year O&M Oversight Sub-Account under Paragraph E.4., above, are complete, the Escrow Manager shall make quarterly deposits of funds accumulated in the Cash Account during the preceding quarter to the Post-30 Year O&M Work Sub-Account until it is filled to the Initial, Interim, or Final Cost Estimate, as applicable, for the Post-30 Year O&M Oversight Funding Limit.

6. After the deposits to the Post-30 Year O&M Work Sub-Account under Paragraph E.5., above, are complete, the Escrow Manager shall make quarterly deposits of funds accumulated in the Cash Account during the preceding quarter to the Post-30 Year O&M Oversight Sub-Account until it is filled to the Initial, Interim, or Final Cost Estimate, as applicable, for the Post-30 Year O&M Oversight Funding Limit.

7. After the deposits to the Post-30 Year O&M Account under Paragraph E.6., above, are complete, the Escrow Manager

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1 shall make quarterly deposits of funds accumulated in the Cash
 2 Account during the preceding quarter to the Support Costs Account
 3 until it is filled to the limit as determined under Section 2.15.
 4 of the ROW. Settling Defendants shall be entitled to draw from
 5 this Account only after the 30-Year O&M and Post-30 Year O&M
 6 Accounts are fully funded based upon the Final Cost Estimate and
 7 they have received a covenant not to sue, as provided for in
 8 Section XXV, Paragraphs A.3. and A.4. (Covenants Not To
 9 Sue/Reservations of Rights), for all 30-Year and Post-30 Year O&M
 10 Work and associated governmental/regulatory oversight of the
 11 United States. Any withdrawals by Settling Defendants from the
 12 Support Costs Account shall be made only after demonstration,
 13 based upon an accounting and adequate supporting documentation,
 14 that Support Costs have been incurred pursuant to this Consent
 15 Decree but not reimbursed.

16 8. Unless otherwise agreed to in writing by EPA and
 17 the Settling Defendants and except as provided above in
 18 Paragraphs E.2. and E.3. concerning accounting for the RCRA Trust
 19 Fund and other restricted funds, the cumulative deposits to any
 20 Account shall not exceed the applicable and effective Funding
 21 Limit as set forth in this Consent Decree at Section XVIII.
 22 Paragraph A. (Cost Estimates and Fund Transfers), except as a
 23 result of interest accumulation. Interest accumulation shall be
 24 administered according to the terms of Paragraph I., below.

F. EXCESS FUNDING

25 After (i) the Final Cost Estimate and associated Final
 26 Funding Limit(s) become effective, (ii) the Cashout Settlements
 27 are completed, and (iii) all deposits pursuant to Paragraph E.,
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1 above, or Section XVIII, Paragraph B. (Cost Estimates and Fund
 2 Transfers) so that each of the Accounts and Sub-Accounts referred
 3 to in Paragraph E., above, are fully funded, the Escrow Manager
 4 shall deposit all recoveries of monies from Third Parties under
 5 Section XIII. (Coordinated Enforcement Recovery) and any excess
 6 funds remaining in the Cash Account to the Post-30 Year O&M
 7 Account to be held in trust, together with any interest accrual
 8 or income, to pay for performance of the Post-30 Year O&M Work.

9 G. Phase II Account Disbursements

10 1. The Escrow Agreement shall instruct and authorize
 11 the Escrow Manager to disburse funds from the Phase II Work Sub-
 12 Account as follows:

13 a. to pay for the Phase II Work to be performed
 14 by the Settling Defendants pursuant to Section VII, Paragraph B,
 15 (Work To Be Performed).

16 b. to pay to EPA requested amounts as Funded
 17 Future Response Costs upon exhaustion of funds in the Phase II
 18 Future Response Costs Sub-Account.

19 c. to fund or to reimburse EPA's performance of
 20 Phase I or Phase II Work in the event that Settling Defendants
 21 fail to perform such Work pursuant to Section VII, Paragraph C.
 22 (Work To Be Performed) or Section XV, Paragraph C.4. (Covenants
 23 Not To Sue/Reservations of Rights).

24 d. to pay for other matters upon written
 25 agreement of EPA and the Settling Defendants.

26 2. The Escrow Agreement shall instruct the Escrow
 27 Manager to disburse funds from the Phase II Future Response Costs
 28 Sub-Account as follows:

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1 a. upon request by EPA, to pay EPA for Funded
 2 Future Response Costs associated with the Phase II Work.
 3 b. upon request by EPA, to pay for Phase II Work
 4 upon exhaustion of unrestricted funds in the other Accounts.
 5 c. to pay for other matters upon written
 6 agreement of EPA and the Settling Defendants.
 7 H. After Certification of Completion of Phase II Work
 8 pursuant to Section XIV. (Certifications of Completion), any
 9 monies remaining in the Phase II Account shall be distributed to
 10 the remaining Accounts in the priority specified in Paragraphs
 11 E.2. through 7., above, or in accordance with Paragraph F.,
 12 above, as applicable.
 13 I. Interest. Interest received on each Account in the
 14 Escrow Account shall be paid into the Account on which it is
 15 earned, and may be used first to pay for the Account fees charged
 16 by the Escrow Manager to administer the Escrow Account.
 17 Remaining accumulations of interest then shall be used in the
 18 same manner and for the same purposes as the other funds in the
 19 Escrow Account.
 20 J. Reports
 21 1. The Escrow Agreement shall require the Escrow
 22 Manager to prepare and submit to the Settling Defendants and EPA
 23 quarterly statements summarizing (a) monies received and
 24 disbursed in the prior quarter from and to the Escrow Account,
 25 each of the Accounts and Sub-Accounts, and to the Hazardous
 26 Substance Superfund; and (b) the balances in each Account and
 27 Sub-Account as of the date of each quarterly statement. The
 28 Escrow Agreement shall also require the Escrow Manager to submit

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1 an annual report to EPA and the Settling Defendants, which shall
 2 include a summary of monies received and disbursed in the
 3 preceding twelve (12) month period, for the Escrow Account
 4 including each Account and Sub-Account. The reporting periods
 5 for the Escrow Account quarterly statements and the annual
 6 financial reports, pursuant to this Paragraph J.1., and the
 7 Overall Project Quarterly Reports and the Annualized Phase II
 8 Work Budget Estimates reports, required at Section 5.4., shall
 9 be conformed to use common reporting periods to the maximum
 10 extent practicable.
 11 2. The Settling Defendants shall submit to EPA for
 12 approval and in accordance with the schedule at Section 5.4.
 13 an annual work budget ("Annualized Phase II Work Budget
 14 Estimate"), and updates thereto, setting forth the monies
 15 estimated to be necessary to satisfy the Phase II Work Sub-
 16 Account expenses described in Section VII. Paragraph B.4. (Work
 17 To Be Performed), and Section 3.0. of the ROW.

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XVIII. COST ESTIMATES AND FUND TRANSFERS

A. Cost Estimates and Funding Limits

1. Initial Cost Estimate

a. Within thirty (30) days of the date of entry of this Consent Decree, the Settling Defendants shall submit to EPA a proposed Initial Cost Estimate, separated into sub-components of cost, for the Work under this Consent Decree, as set forth in Section 2.15. of the EOM. Portions of the proposed Initial Cost Estimate shall be provided by EPA pursuant to sub-Paragraphs 1.b. and 1.c., below. The Initial Cost Estimate shall be based upon available data, and will be used to establish Initial Funding Limits for the Accounts and Sub-Accounts of the Casella Consent Decree Escrow Account provided for under Section XVII. (Escrow Accounts/Financing The Work). The Initial Cost Estimate shall also be used as the starting point for development, before inclusion of all applicable premiums and other cost elements, of the cost estimate for the Cashout Settlements procedure.

b. Until updated pursuant to Section XIX. Paragraph B.2. (Reimbursement of Response Costs), the Initial Past Response Costs Estimate established pursuant to Section XIX. Paragraph B.1. (Reimbursement of Response Costs) shall be used as the Initial Past Response Costs Funding Limit for the Past Response Costs Account.

c. EPA shall provide an estimate of Future Response Costs for Future Response Actions associated with Phase II Work, which estimate shall be used as the Initial Funding Limit for the Phase II Future Response Costs Sub-Account of the

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Phase II Account. EPA shall also provide estimates of governmental/regulatory oversight costs for 30-Year and Post-30 Year O&M Work, which estimates shall be the Initial Funding Limits for the 30-Year O&M Oversight Sub-Account and Post-30 Year O&M Oversight Sub-Account, respectively.

d. The cost estimates established under this Paragraph will be re-evaluated according to the procedures in Paragraphs A.2. and A.3., below, and the revised cost estimates may necessitate or permit changes in the Funding Limits for use in accordance with Section XVII. (Escrow Accounts/Financing The Work). The Initial Cost Estimate shall be effective until the Interim Cost Estimate and associated Interim Funding Limits become effective; or in the case of Past Response Costs, until such costs are updated pursuant to Section XIX. Paragraphs B. and B. (Reimbursement of Response Costs); or in the case of the Funded Future Response Costs estimate for Future Response Actions associated with the Phase II Work or the costs of governmental/regulatory oversight for the 30-Year and Post-30 Year O&M Work, until a proposed revised estimate is final pursuant to Paragraph A.2., below.

e. EPA shall: (i) approve in whole or in part, (ii) approve upon specified conditions, (iii) disapprove, in whole or in part, or (iv) any combination of the above, the proposed Initial Cost Estimate pursuant to Section XIX. (Submissions Requiring Agency Approval). If EPA and the Settling Defendants cannot reach agreement on the Initial Cost Estimate, then the matter shall be subject to dispute resolution under the dispute resolution procedures of Section XXI. (Dispute Resolution). The

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1 whole or in part, or (iv) any combination of the above, the
 2 proposed Interim Cost Estimate pursuant to Section XII.
 3 (Submissions Requiring Agency Approval). If the proposed Interim
 4 Cost Estimate is different from the Initial Cost Estimate, in
 5 whole or in part, and EPA and the Settling Defendants cannot
 6 reach agreement on the new estimates, then the matter shall be
 7 subject to dispute resolution under the dispute resolution
 8 procedures of Section XXI, (Dispute Resolution). The Interim
 9 Cost Estimate shall become effective on the later of the date
 10 thirty (30) days after EPA approves in writing the Interim Cost
 11 Estimate submitted by Settling Defendants or the date of final
 12 resolution of any dispute pursuant to this Paragraph A.2.c.
 13 ("effective date"), except that any undisputed portion of the
 14 Interim Cost Estimate shall become effective as of the date
 15 thirty (30) days after EPA's approval.
 16 d. The Interim Cost Estimate shall be used to
 17 establish Interim Funding Limits that will remain effective until
 18 superseded by the Final Cost Estimate and associated Final
 19 Funding Limits.
 20 J. Final Cost Estimate
 21 a. As part of Settling Defendants' Phase I Work
 22 obligation, Settling Defendants shall re-evaluate the Interim
 23 Cost Estimate, taking into account, at least, the information
 24 obtained as a result of completion of Initial Phase II Work and
 25 the experience gained and costs incurred during performance of
 26 the O&M Base Period Work, and submit to EPA proposed Final Cost
 27 Estimate, separated into sub-components of costs, for the 30-Year
 28 O&M Work and Post-30 Year O&M Work as specified in Section 2.15.
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1 Initial Cost Estimate shall become effective on the later of the
 2 date thirty (30) days after EPA approves in writing the Initial
 3 Cost Estimate submitted by Settling Defendants or the date of
 4 final resolution of any dispute pursuant to this Paragraph A.1.c.
 5 ("effective date"), except that any undisputed portion of the
 6 Initial Cost Estimate shall become effective as of the date
 7 thirty (30) days after EPA's approval.
 8 2. Interim Cost Estimates
 9 a. As part of the Phase I Work, Settling
 10 Defendants shall re-evaluate the Initial Cost Estimate, taking
 11 into account, at least, the information obtained and findings
 12 from the Remedial Investigation/Feasibility Study Component of
 13 Work, and submit to EPA proposed Interim Cost Estimate separated
 14 into sub-components of costs, for Work under this Consent Decree
 15 as specified in Paragraph A.1., above, and Section 2.15. of the
 16 SOW. Portions of the proposed Interim Cost Estimate shall be
 17 provided by EPA pursuant to sub-Paragraph 2.b., below.
 18 b. Past Response Costs shall be updated by the
 19 United States as provided in Section XIX, Paragraphs B. and E.
 20 (Reimbursement of Response Costs). Further, EPA shall re-
 21 evaluate and, if necessary, propose changes to the estimates of
 22 Future Response Costs associated with the Phase II Work
 23 and governmental/regulatory oversight costs for 30-Year and Post-
 24 30 Year O&M Work, which revised estimates shall be the proposed
 25 Interim Funding Limits for the 30-Year O&M Oversight Sub-Account
 26 and Post-30 Year O&M Oversight Sub-Account, respectively.
 27 c. EPA shall: (i) approve in whole or in part,
 28 (ii) approve upon specified conditions, (iii) disapprove, in
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1 of the 50M. Portions of the proposed Final Cost Estimate shall
2 be provided by EPA pursuant to sub-Paragraph 3.b., below.

3 b. Past Response Costs shall be updated by the
4 United States as provided in Section XIX, Paragraphs B. and E.
5 (Reimbursement of Response Costs). Further, EPA shall re-
6 evaluate and, if necessary, propose changes to the estimates of
7 governmental/regulatory oversight costs for 30-Year and Post-30
8 Year O&M Work, which revised estimates shall be the proposed
9 Final Funding Limits for the 30-Year O&M Oversight Sub-Account
10 and Post-30 Year O&M Oversight Sub-Account, respectively.

11 c. EPA shall: (i) approve in whole or in part,
12 (ii) approve upon specified conditions, (iii) disapprove, in
13 whole or in part, or (iv) any combination of the above, the
14 proposed Final Cost Estimate pursuant to Section XII.

15 (Submissions Requiring Agency Approval). If the proposed Final
16 Cost Estimate is different from the Interim Cost Estimate, in
17 whole or in part, and EPA and the Settling Defendants cannot
18 reach agreement on the new estimates, then the matter shall be
19 subject to dispute resolution under the dispute resolution
20 procedures of Section XXI. (Dispute Resolution). The Final Cost
21 Estimate shall become effective on the later of the date thirty
22 (30) days after EPA approves in writing the Final Cost Estimate
23 submitted by Settling Defendants or the date of final resolution
24 of any dispute pursuant to this Paragraph A.3.c. ("effective
25 date").

26 d. The Final Cost Estimate shall be used to
27 establish Final Funding Limits for each of the remaining Accounts
28 and Sub-Accounts of the Escrow Account.

18 B. Fund Transfers

19 The Escrow Agreement shall instruct the Escrow Manager
20 to transfer funds among Accounts as follows:

21 1. Transfers Based Upon Cost Estimates

22 a. As soon as practicable after the Interim and
23 Final Cost Estimate and associated Interim and Final Funding
24 Limits become effective, pursuant to this Section XVIII.

25 Paragraph A. (Cost Estimates and Fund Transfers), all Accounts
26 will be reviewed and, to the extent any Account which had
27 previously been considered fully funded based upon the Initial or
28 Interim Cost Estimate, as applicable, is now under-funded, monies
29 from the Cash Account, if available, shall be deposited to the
30 under-funded Accounts in the priority order set forth in Section
31 XVII. Paragraphs E.1. through E.7. (Escrow Accounts/Financing The
32 Work) until each Account, in turn, is funded to the Interim or
33 Final Funding Limit or, as to the Past Response Costs Account, to
34 the Funding Limit established under Section XIX. Paragraph B.
35 (Reimbursement of Response Costs) as adjusted by Section XIX.

36 Paragraph E. (Reimbursement of Response Costs).

37 To the extent monies are not available in the Cash
38 Account to fund each Account, in priority order, to the revised
39 Funding Limits, then, except for restricted funds under Paragraph
40 B.3., below, transfers shall be made from the lowest priority
41 Account with available funds to the highest priority Account
42 requiring additional funds until all Accounts are funded, to the
43 extent possible, to the revised Funding Limit.

44 b. If based upon the Interim or Final Cost

45 Estimate revisions, an Account is over-funded, except for

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restricted funds under Paragraph B.3., below, monies from the over-funded Accounts shall be transferred to higher priority under-funded Accounts until all Accounts are funded, to the extent possible, to the revised Funding Limits, and after higher priority transfers are satisfied, then to equal or lower priority under-funded Accounts until those Accounts are funded, to the extent possible, to the revised Funding Limits.

c. Transfer of monies pursuant to Paragraph B.1.a. or B.1.b., above, based upon newly effective Funding Limits is not subject to dispute resolution.

2. Transfers Prior to Certification of Completion of Phase II Work

a. At any time prior to Certification of Completion of Phase II Work, EPA may, but is not required to, request transfers of monies, if available, in priority order, from the Support Costs Account, the Sub-Accounts of the Post-30 Year O&M Account, the Sub-Accounts of the 30-Year O&M Account, subject to the restrictions of Paragraph B.3. of this Section; or the Future Response Costs Sub-Account of the Phase II Account to the Phase II Work Sub-Account if there are insufficient funds in the Phase II Work Sub-Account to finance the Phase II Work. Any decision by EPA whether or not to transfer monies pursuant to this Paragraph B.2. is not subject to dispute resolution.

b. To the extent a deposit to the 30-Year O&M Work Sub-Account of the restricted funds, pursuant to Paragraph B.3. of this Section, overfunds the Account, unrestricted monies from the Account shall be transferred to higher priority under-funded Accounts until all such Accounts are funded, to the extent

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possible, to the applicable Funding Limits, and after higher priority transfers are satisfied, then to equal or lower priority under-funded Accounts until those Accounts are funded, to the extent possible, to the applicable Funding Limits; provided, however, no transfers pursuant to this sub-Paragraph 2.b. shall be made to equal or lower priority under-funded Accounts until the Interim Cost Estimate is effective and any and all transfers, pursuant to Paragraph B.1., based upon the newly effective Interim Cost Estimate are made.

3. Restrictions on Transfers

Unless Settling Defendants agree otherwise, all funds in the RCRA Trust Fund after transfer to the Escrow Account and all monies in the 30-Year O&M Account subject to the transfer limitations in Section XIII. (Coordinated Enforcement Recovery) shall be reserved exclusively for 30-Year O&M Work as provided in Section XVII. Paragraph D.2. (Escrow Accounts/Financing The Work) and, notwithstanding any other provision of this Consent Decree, may not be transferred. Unrestricted funds, as authorized by Paragraph C.3. of Section XIII. (Coordinated Enforcement Recovery), may be transferred from the 30-Year O&M Account in accordance with this Paragraph B.

4. Other Transfers

Other transfers of monies not specified above may be made prior to Certification of Completion of Phase II Work provided that EPA and the Settling Defendants agree in writing.

5. The availability of monies in, or transfer of monies between or among, Accounts and Sub-Accounts of the Escrow Account shall not be construed to preclude or otherwise affect

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1 enforcement or cost recovery actions or claims by the United
 2 States or the Settling Defendants against Third Parties under
 3 CERCLA, RCRA, or other appropriate laws.

19 XIX. REIMBURSEMENT OF RESPONSE COSTS

4 A. The United States has incurred, and will continue to
 5 incur, costs in connection with response actions at the Site.
 6 The United States and the Settling Defendants intend, through
 7 this Consent Decree, to (a) create a mechanism for the potential
 8 recovery by the United States of Past Response Costs; and (b)
 9 create mechanisms to pay certain Future Response Costs that will
 10 be incurred by the United States after the entry of this Consent
 11 Decree. Subject to the Settling Defendants' reservation of
 12 rights (Section XXV, Paragraph D.), and for purposes of this
 13 Consent Decree only, the Settling Defendants agree that the
 14 United States may recover its Past Response Costs as provided for
 15 in this Consent Decree.

16 B. Past Response Costs

17 1. From March 1, 1992, the United States has incurred
 18 Past Response Costs for CERCLA response actions in connection
 19 with the Casella Site. Within six (6) months after entry of
 20 this Consent Decree, the United States shall provide to the
 21 Settling Defendants a summary in the form of the Superfund Cost
 22 Recovery Enhancement System ("SCRES") Report, or any superseding
 23 summary report, of these Past Response Costs ("Initial Past
 24 Response Costs Estimate"). The United States shall update and
 25 finalize the Initial Past Response Costs Estimate no later than
 26 twelve (12) months after the date of entry of this Consent Decree
 27 ("Final Past Response Costs Summary").

28 2. The Final Past Response Costs Summary, together
 29 with any accrued interest under Paragraph B.3., below, shall be
 30 the Past Response Costs Funding Limit pursuant to Section XVIII.

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1 Substance Superfund" and referencing the EPA Region and Site name
2 and number, "Caselle/093H" and DOX Case Number 90-7-1-611A. The
3 Escrow Manager shall ensure that any payments by certified checks
4 are forwarded to

5 U.S. Environmental Protection Agency
6 Region II, Superfund Accounting
7 Box No. 3508JM
Pittsburgh, PA 15251

8 The Escrow Manager shall also ensure that copies of each check,
9 together with the transmittal letter, are sent to EPA as
10 specified in Section XXIX. (Notices and Submissions).

11 C. Funded Future Response Costs -- Phase I

12 1. Subject to the limitations below in this Paragraph
13 C., Settling Defendants shall pay the United States the following
14 sums for Future Response Costs incurred primarily during the
15 first six (6) years after entry of the Consent Decree. Subject
16 to the payment provisions in Paragraph C.2., below, the Settling
17 Defendants shall pay annually at least the Annual Base Amount,
18 but in no event more than the Annual Limitation.

19 Year	20 Annual Base	21 + Annual Discretionary Increment	22 Annual Limitation (Total)
23 1	\$800,000	\$400,000	\$1,200,000
24 2	\$800,000	\$400,000	\$1,200,000
25 3	\$600,000	\$300,000	\$ 900,000
26 4	\$400,000	\$200,000	\$ 600,000
27 5	\$200,000	\$100,000	\$ 300,000
28 6	\$200,000	\$100,000	\$ 300,000

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1 Paragraph A. (Cost Estimates and Fund Transfers) for the Past
2 Response Costs Account. In accordance with the provisions of
3 Paragraph E. of this Section XIX., additional amounts of Future
4 Response Costs not otherwise reimbursed may periodically be added
5 as an adjustment to the Past Response Costs Funding Limit.

6 3. Subject to the Settling Defendants' reservation of
7 rights at Section XXV. (Covenants Not To Sue/Reservations of
8 Rights), the United States may recover prejudgment interest on
9 the amount of unreimbursed Past Response Costs identified in
10 Paragraph B.2., above, until the date the entire amount is
11 reimbursed to the Superfund pursuant to Section XVII. (Escrow
12 Accounts/Financing The Work). Such prejudgment interest shall
13 accrue from the first day of the month following lodging of this
14 Consent Decree, and such interest on unreimbursed amounts shall
15 accrue at the rate established pursuant to 42 U.S.C. § 9607(a) or
16 any subsequently enacted superseding provision of law. Interest
17 accrued shall be added annually to the Past Response Costs
18 Funding Limit until all principle and interest amounts are
19 recovered pursuant to Section XVII. (Escrow Accounts/Financing
20 The Work).

21 4. Payment Instructions. Whenever the Escrow Manager
22 receives monies that are attributable to the Past Response Costs
23 Account under the terms of Section XVII. Paragraph E. (Escrow
24 Accounts/Financing The Work), such funds up to the amount of the
25 then applicable Past Response Costs Funding Limit, shall be paid
26 immediately to the Superfund in the form of an electronic funds
27 transfer according to instructions to be provided by EPA or by a
28 certified check or checks made payable to the "EPA Hazardous

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1 Both the Annual Base Amount and the Annual Limitation shall be
 2 adjusted annually on the anniversary date of Consent Decree entry
 3 for inflation by a factor equal to the current year's Consumer
 4 Price Index. Payment of these Funded Future Response Costs is
 5 not subject to dispute resolution except as specified in
 6 Paragraph C.3., below.

7 2. Payment of the Funded Future Response Costs
 8 pursuant to Paragraph C.1., above, shall be made by semi-annual
 9 payments as follows: Within thirty (30) days after entry of this
 10 Consent Decree, Settling Defendants shall pay to the EPA half of
 11 the Annual Base Amount for Year 1. On the first day of the month
 12 every six months thereafter, until the payment obligations under
 13 this Paragraph terminate, Settling Defendants shall pay the next
 14 semi-annual installment equal to one-half the applicable Annual
 15 Base Amount, and shall continue such semi-annual installment
 16 payments through the last semi-annual installment payment
 17 required of the Settling Defendants. This payment schedule may
 18 be modified by the written agreement of EPA and the Settling
 19 Defendants.

20 3. For any year in which the Settling Defendants are
 21 obligated to pay the Annual Base Amount in Paragraph C.1., above,
 22 at any time after the second semi-annual installment payment for
 23 that year, EPA may request additional payments up to the Annual
 24 Limitation ("Annual Discretionary Increment") for that year.
 25 EPA's written request for payment of some or all of the Annual
 26 Discretionary Increment will include a written budget statement
 27 describing the activities for which the Annual Discretionary
 28 Increment is intended to be used. Payment of sums demanded from

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1 the Annual Discretionary Increment under this Paragraph C.3. are
 2 due, as set forth in Paragraph C.4., below, at the time of the
 3 next semi-annual payment or within twenty-one (21) days after the
 4 date of receipt by the Settling Defendants of EPA's written,
 5 certified mail request and budget explanation, whichever is
 6 earlier. Settling Defendants' obligation to pay the requested
 7 amount of the Annual Discretionary Increment is not subject to
 8 dispute resolution except for disputes as to whether the monies
 9 are intended to be used for Future Response Actions associated
 10 with the Phase I Work. In the event of such a dispute, the
 11 disputed payment must be made by the Settling Defendants
 12 notwithstanding the dispute. Formal dispute resolution, if
 13 necessary, of any such dispute shall be governed by Section XII.
 14 (Dispute Resolution), Paragraph D. In the event that Settling
 15 Defendants prevail in the dispute, EPA shall not be required to
 16 repay the disputed amount; instead, the amount shall be applied
 17 as a credit to the next semi-annual installment due or to
 18 Settling Defendants' liability for Unfunded Future Response
 19 Costs.

20 If, in any year, EPA elects not to request some or all of
 21 the Annual Discretionary Increment, the unrequested and unpaid
 22 amount shall accrue as a cumulative credit toward the Annual
 23 Discretionary Increment available to EPA in later years. At any
 24 time up through but not including the sixth anniversary date of
 25 entry of the Consent Decree, payment of the credited amount may
 26 be demanded by EPA from the Settling Defendants in writing,
 27 together with a budget statement describing the activities for
 28 which the funds are intended to be used. Settling Defendants

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1 shall pay the demanded amount, provided, however, that any
 2 cumulative credit associated with the Annual Discretionary
 3 Increment shall not be payable after the thirtieth (30th) day
 4 from the sixth anniversary date of entry of the Consent Decree,
 5 excluding funds necessary for activities that have been
 6 identified, budgeted and are substantially in progress during the
 7 six (6) year period.

4. Payment Instructions

8 a. Settling Defendants shall pay the United
 9 States for all monies owed under this Paragraph C., in the form
 10 of an electronic funds transfer according to instructions to be
 11 provided by EPA or by a certified check or checks, accompanied by
 12 a transmittal letter, made payable to the "EPA Hazardous
 13 Substance Superfund" and referencing the EPA Region and Site Name
 14 and Number, "Casamalia/093H" and the DOJ Case Number 90-7-1-611A.
 15 The Settling Defendants shall forward the certified check(s) to

U.S. Environmental Protection Agency
 Region IX
 Superfund Accounting
 Box No. 36083M
 Pittsburgh, PA 15251

16 Copies of each check together with the transmittal letter shall
 17 be sent to EPA as specified in Section XXIX. (Notices and
 18 Submissions). The monies received by EPA shall be placed in an
 19 EPA site-specific Casamalia account.

20 b. Notwithstanding any other provision of this
 21 Consent Decree, in the event any monies received under this
 22 Paragraph C. remain unexpended thirty (30) days after the sixth
 23 anniversary date of entry of the Consent Decree, EPA shall not be
 24 precluded from using such monies for Future Response Actions.

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1 Work, or Future Response Costs, provided, however, EPA may not,
 2 pursuant to sub-Paragraph A.6.b. of Section XXV. (Covenants Not
 3 To Sue/Reservations of Rights), recover such costs from Settling
 4 Defendants.
 5 5. Funded Future Response Costs paid to EPA pursuant
 6 to this Paragraph C. are for the exclusive use of the United
 7 States (including federal contractors and consultants) for
 8 performance of Future Response Actions and may not be used by any
 9 entity not a Party to this Consent Decree, unless EPA and the
 10 Settling Defendants agree otherwise in writing.

11 D. Funded Future Response Costs -- Phase II

12 1. In addition to the amounts received pursuant to
 13 Paragraph C., above, EPA may request, and is entitled to receive,
 14 disbursements of monies from the Future Response Costs Sub-
 15 Account of the Phase II Account until Certification of Completion
 16 of the Phase II Work. EPA's written request for a specified sum
 17 shall authorize the Escrow Manager to disburse to EPA the
 18 requested amount subject only to the availability of funds in the
 19 Future Response Costs Sub-Account as determined pursuant to
 20 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfer).
 21 To the extent funds in the Future Response Costs Sub-Account are
 22 insufficient to satisfy EPA's payment request under this
 23 Paragraph, the Escrow Manager shall pay the requested amount from
 24 monies in the Phase II Work Sub-Account, pursuant to Section
 25 XVII. Paragraph G. (Escrow Accounts/Financing The Work). Payment
 26 to EPA under this Paragraph D.1. shall be made pursuant to the
 27 provisions of Paragraph C.4.e., above. Any monies that remain in
 28 the Future Response Costs Sub-Account after Certification of

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1 Completion of Phase II Work shall be distributed to the remaining
 2 Accounts in the priority established under Section XVII.
 3 Paragraph E. (Recrow Accounts/Financing The Work).

4 3. Funded Future Response Costs provided to EPA
 5 pursuant to this Paragraph D. are for the exclusive use of the
 6 United States (including federal contractors and consultants) for
 7 the performance of Future Response Actions and may not be used by
 8 any entity not a Party to this Consent Decree, unless EPA and the
 9 Settling Defendants agree otherwise in writing.

10 E. Unfunded Future Response Costs

11 Future Response Costs incurred by the United States
 12 beginning on the thirtieth (30th) day after entry of this Consent
 13 Decree not funded pursuant to Paragraph C. or D., above, or not
 14 reimbursed pursuant to Section XXIII. (Coordinated Enforcement
 15 Recovery), shall be considered Unfunded Future Response Costs and
 16 shall be added periodically to the Past Response Costs Funding
 17 Limit to be reimbursed to EPA pursuant to the priorities

18 established in Section XVII. Paragraph E. (Recrow
 19 Accounts/Financing The Work). The United States shall establish
 20 the amount of any adjustment to the Past Response Costs Funding
 21 Limit by providing to the Settling Defendants a written summary,
 22 in the form of the Superfund Cost Recovery Enhancement System
 23 ("SCORES") Report, or any superseding summary report, of Unfunded
 24 Future Response Costs. The total amount of the summary, or the
 25 undisputed amount in the event of a dispute, shall be added to
 26 the Past Response Costs Funding Limit thirty (30) days after the
 27 United States' written transmittal of the summary to the Settling
 28 Defendants or resolution of the dispute, as applicable. Any

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1 dispute with respect to the amount of the Unfunded Future
 2 Response Costs shall be resolved pursuant to Section XII.
 3 (Dispute Resolution), Paragraph E. Subject to the Settling
 4 Defendants' reservation of rights at Section XIV. (Consentants Not
 5 To Sue/Reservations of Rights), the United States may recover
 6 prejudgment interest in accord with the provisions of Section
 7 XIX. Paragraph B.3. (Reimbursement of Response Costs) on any
 8 adjustment to the Past Response Costs Funding Limit made under
 9 this Paragraph from the date that the costs were incurred.

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XX. FORCE MAJEURE

A. "force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, the Director of the Hazardous Waste Management Division, EPA Region IX, or any designee or successor, within 72 hours of when Settling Defendants first knew of the event and that the event might cause a delay. Within fourteen (14) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for

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implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for additional delay caused by such failure. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

C. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision.

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1 If EPA determines that the event did not constitute force
 2 majeure, then any deadline missed as a result of the event
 3 claimed to be force majeure by the Settling Defendants shall
 4 constitute a violation of the Consent Decree and Settling
 5 Defendants shall be subject to stipulated penalties as provided
 6 in Section XXI. (Stipulated Penalties).

7 E. If the Settling Defendants elect to invoke the dispute
 8 resolution procedures set forth in Section XXI. (Dispute
 9 Resolution), they shall do so no later than fifteen (15) days
 10 after receipt of EPA's notice under Paragraph C. or D., above.
 11 Any dispute concerning the application of force majeure that
 12 proceeds to formal dispute resolution shall be resolved pursuant
 13 to Paragraph E. of Section XXI. (Dispute Resolution). In any
 14 such proceeding, Settling Defendants shall have the burden of
 15 demonstrating by a preponderance of the evidence that the delay
 16 or anticipated delay has been or will be caused by a force
 17 majeure event, that the duration of the delay or the extension
 18 sought was or will be warranted under the circumstances, that
 19 best efforts were exercised to avoid and mitigate the effects of
 20 the delay, and that Settling Defendants complied with the
 21 requirements of this Section.

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XXI. DISPUTE RESOLUTION

A. General Provisions

Unless otherwise expressly provided for in this Consent
 Decree, the dispute resolution procedures of this Section shall
 be the exclusive mechanism to resolve disputes arising under or
 with respect to this Consent Decree. However, the procedures set
 forth in this Section shall not apply to actions by the United
 States to enforce obligations of the Settling Defendants that
 have not been disputed in accordance with this Section.

B. Informal Dispute Resolution

1. Any dispute which arises under or with respect to
 this Consent Decree shall in the first instance be the subject of
 informal negotiations between the parties to the dispute. The
 period for informal negotiations shall not exceed twenty (20)
 days from the time the dispute arises, unless it is modified by
 written agreement of the parties to the dispute. The dispute
 shall be considered to have arisen when one party notifies the
 other party in writing that there is a dispute.

2. In the event that the parties cannot resolve a
 dispute by informal negotiations under the preceding Paragraph,
 then the position advanced by EPA shall be considered binding
 unless, within thirty (30) days after the conclusion of the
 informal negotiation period, Settling Defendants invoke the
 formal dispute resolution procedures of this Section by serving
 on the United States a written Statement of Position on the
 matter in dispute, including, but not limited to, any factual
 data, analysis or opinion supporting that position and any
 supporting documentation relied upon by the Settling Defendants.

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1 The Statement of Position shall specify the Settling Defendants'
2 position as to whether formal dispute resolution should proceed
3 under Paragraph D., E., or F., below. Settling Defendants'
4 decision to invoke dispute resolution shall not in and of itself
5 constitute a force majeure event under Section XX. (Force
6 Majeure).

7 C. Formal Dispute Resolution Procedures

8 1. Formal dispute resolution for disputes under this
9 Consent Decree shall proceed pursuant to the provisions set forth
10 in this Paragraph C.

11 2. Within thirty (30) days after receipt of Settling
12 Defendants' Statement of Position, EPA will serve on Settling
13 Defendants its Statement of Position, including, but not limited
14 to, any factual data, analysis, or opinion supporting that
15 position and all supporting documentation relied upon by EPA.
16 EPA's Statement of Position shall include a statement as to
17 whether formal dispute resolution should proceed under Paragraph
18 D., E., or F., below.

19 3. If there is disagreement between EPA and the
20 Settling Defendants as to whether dispute resolution should
21 proceed under Paragraph D., E., or F., below, the parties to the
22 dispute shall follow the procedures set forth in the paragraph
23 determined by EPA to be applicable. However, if the Settling
24 Defendants ultimately appeal to the court to resolve the dispute,
25 the Court shall determine which paragraph is applicable in
26 accordance with the standards of applicability set forth in
27 Paragraph D., E., or F., below.

28 D. Formal dispute resolution for disputes pertaining to

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1 the selection or adequacy of any response action shall be
2 conducted pursuant to the procedures set forth in this Paragraph
3 D. For purposes of this Paragraph, the adequacy of any response
4 action includes, without limitation: (1) the adequacy or
5 appropriateness of plans and procedures to implement plans; and
6 (2) the adequacy of the performance of response actions taken
7 pursuant to this Consent Decree.

8 1. An administrative record of the dispute shall be
9 maintained by EPA and shall contain all statements of position,
10 including supporting documentation, submitted pursuant to this
11 Paragraph D. and Paragraph D., above (i.e., informal dispute
12 resolution). The Settling Defendants and EPA may supplement the
13 record as authorized by applicable law.

14 2. The Director of the Hazardous Waste Management
15 Division, EPA Region IX, or any designee or successor, will issue
16 a final administrative decision resolving the dispute based on
17 the administrative record described in Paragraph D.1. This
18 decision shall be binding upon the Settling Defendants, subject
19 only to the right to seek judicial review pursuant to Paragraphs
20 D.3. and D.4.

21 3. Any administrative decision made by EPA pursuant
22 to Paragraph D.2. shall be reviewable by this Court, provided
23 that a notice of judicial appeal is filed by the Settling
24 Defendants with the Court and served on all Parties to the
25 dispute within thirty (30) days of receipt of EPA's decision.
26 The notice of judicial appeal shall include a description of the
27 matter in dispute, the efforts made by the parties to resolve it,
28 the relief requested, and the schedule, if any, within which the

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1 dispute must be resolved to ensure orderly implementation of this
2 Consent Decree. The United States may file a response to
3 Settling Defendants' notice of judicial appeal.

4 4. In proceedings on any dispute governed by this
5 Paragraph, Settling Defendants shall have the burden of
6 demonstrating that the decision of the Hazardous Waste Management
7 Division Director, or any designee or successor, is arbitrary and
8 capricious or otherwise not in accordance with law. Judicial
9 review of EPA's decision shall be on the administrative record
10 compiled pursuant to Paragraphs D.1.

11 E. Formal dispute resolution for disputes pertaining to
12 the establishment of Cost Estimates pursuant to Section XVIII.
13 Paragraph A. (Cost Estimates and Fund Transfers) shall be
14 governed by this Paragraph. A dispute of a cost estimate shall
15 not challenge the underlying selection or adequacy of a response
16 action. Remedy selection/adequacy disputes shall be resolved
17 pursuant to Paragraph D., above, before any related cost estimate
18 dispute is addressed.

19 Notwithstanding the provisions of this Paragraph E.,
20 any dispute as to EPA's estimate for the Phase II Future Response
21 Costs Sub-Account of the Phase II Account, pursuant to Section
22 XIX., Paragraph D. (Reimbursement of Response Costs) shall be
23 governed by the procedures of Paragraph D. of this Section. For
24 purposes of this Consent Decree only, the Parties agree that EPA
25 is entitled to collect such Future Response Costs, and any
26 dispute as to them shall be limited to the appropriate amount of
27 the Phase II Future Response Costs Sub-Account Funding Limit
28 rather than EPA's entitlement to such monies.

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1 Any and all disputes as to a Cost Estimate shall be
2 brought within thirty (30) days of EPA's written approval,
3 pursuant to Section 5.11. of the BOW, of such Cost Estimate. If
4 EPA includes governmental/regulatory oversight costs in the Cost
5 Estimate, the Settling Defendants may dispute EPA's right to
6 include such costs; provided, however, that such dispute may be
7 raised only with respect to the Final Cost Estimate.

8 Notwithstanding the provisions of Paragraph D.4. of Section XVII.
9 (Escrow Accounts/Financing The Work), if Settling Defendants
10 prevail in the dispute, any amounts in the 30-Year and Post-30
11 Year O&M Oversight Sub-Accounts shall be transferred to other
12 Accounts in priority order pursuant to Paragraph E. of Section
13 XVII. (Escrow Accounts/Financing The Work), and payment of
14 governmental/regulatory oversight costs shall not be required for
15 Settling Defendants to obtain the covenants not to sue at
16 Paragraphs A.3. and A.4. of Section XIV. (Covenants Not To
17 Sue/Reservations of Rights).

18 1. Following receipt of the Statements of Position
19 submitted pursuant to Paragraph C., the Director of the Hazardous
20 Waste Management Division, EPA Region IX, or any designee or
21 successor, will issue a final decision resolving the dispute.
22 The Hazardous Waste Management Division Director's decision shall
23 be binding on the Settling Defendants unless, within thirty (30)
24 days of receipt of the decision, the Settling Defendants file
25 with the Court and serve on the parties to the dispute a notice
26 of judicial appeal setting forth the matter in dispute, the
27 efforts made by the parties to resolve it, the relief requested,
28 and the schedule, if any, within which the dispute must be

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1 resolved to ensure orderly implementation of the Consent Decree.
 2 The United States may file a response to Settling Defendants'
 3 notice of judicial appeal.

4 3. In proceedings under this Paragraph, Settling
 5 Defendants shall have the burden of demonstrating that their
 6 position is supported by a preponderance of the evidence.

7 F. Formal dispute resolution for disputes not governed by
 8 Paragraphs D. or E., above, shall be governed by this Paragraph.

9 1. Following receipt of Settling Defendants'
 10 Statement of Position submitted pursuant to Paragraph C., the
 11 Director of the Hazardous Waste Management Division, EPA Region
 12 IX, or any designee or successor, will issue a final decision
 13 resolving the dispute. The Hazardous Waste Management Division
 14 Director's decision shall be binding on the Settling Defendants
 15 unless, within thirty (30) days of receipt of the decision, the
 16 Settling Defendants file with the Court and serve on the parties
 17 a notice of judicial appeal setting forth the matter in dispute,
 18 the efforts made by the parties to resolve it, the relief
 19 requested, and the schedule, if any, within which the dispute
 20 must be resolved to ensure orderly implementation of the Consent
 21 Decree. The United States may file a response to Settling
 22 Defendants' notice of judicial appeal.

23 2. Judicial review of any dispute governed by this
 24 Paragraph shall be governed by applicable provisions of law.

25 G. Work Obligations During Dispute Resolution

26 The invocation of formal dispute resolution procedures
 27 under this Section shall not extend, postpone or affect in any
 28 way (a) the implementation of any ROD or other EPA decision

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1 document or final Deliverable not directly in dispute, and (b)
 2 any obligation of the Settling Defendants under this Consent
 3 Decree not directly in dispute, unless EPA or the Court agrees
 4 otherwise.

5 H. Obligations After Resolution of Dispute

6 1. Stipulated penalties with respect to the disputed
 7 matter shall continue to accrue as allowed in Section XIII.

8 (Stipulated Penalties), but payment shall be stayed pending
 9 resolution of the dispute as provided in Section XIII. Paragraph
 10 J. (Stipulated Penalties). Notwithstanding the stay of payment,
 11 stipulated penalties shall accrue from the first day of
 12 noncompliance with any applicable provision of this Consent
 13 Decree as provided in Section XIII. Paragraph F. (Stipulated
 14 Penalties).

15 2. If Settling Defendants do not prevail in the
 16 disputed matter, they shall, if applicable, then implement the
 17 disputed matter as resolved and perform the work which was the
 18 subject of the dispute, if required. Any Deliverable or other
 19 submission required under this Consent Decree should be amended,
 20 if applicable, to reflect the resolution of the dispute.

21 3. In any dispute in which the Settling Defendants
 22 prevail, (a) any affected deadlines or schedules shall be
 23 extended to account fully for any delays attributable to the
 24 dispute resolution procedures; and (b) any penalties which would
 25 otherwise have accrued for Consent Decree violations shall be
 26 void.

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XIII. STIPULATED PENALTIES

A. Settling Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs B. and C., below, for failure to comply with the requirements of this Consent Decree specified in Paragraphs B. and C., below, unless excused under Section XX. (Force Majeure), or pursuant to Section XXI. (Dispute Resolution). "Compliance" by Settling Defendants shall include submission of Deliverables and other submissions required by this Consent Decree and completion of the tasks and activities under this Consent Decree in the manner, and within the time, established by, and/or approved under, this Consent Decree.

B. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate Deliverables or for any noncompliance under Paragraph D., below:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 1000	Day 1 through 5
\$ 2500	Day 6 through 30
\$ 5000	Day 31 and each day thereafter

C. The following stipulated penalties shall be payable per violation per day to the United States for any other noncompliance with the Consent Decree or SOW that is not covered by Paragraph B., above. For purposes of this Section XIII., "Deliverable" shall mean all submissions or milestone events required of the Settling Defendants under Section 4.6. of the SOW including any additions and modifications made in accordance with

the terms of this Consent Decree.

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500	Day 1 through 5
\$ 1000	Day 6 through 30
\$ 2500	Day 31 and each day thereafter

D. In the event that Settling Defendants suspend performance of the Phase I or Phase II Work without authorization as determined by EPA or in the event that EPA or a designee, assumes performance of a portion or all of the Phase I or Phase II Work as a result of Settling Defendants unauthorized failure to perform, as determined pursuant to Paragraph C. (Failure to Perform) of Section VII. (Work To Be Performed) or Paragraph C.4. of Section XIV. (Covenants Not To Sue/Reservations of Rights), Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph B., above, until such time as the suspended Work has been completed by EPA.

E. The Settling Defendants are jointly and severally liable for any stipulated penalties pursuant to the provisions of this Section. The dollar amounts specified for penalties are not subject to Section XXI. (Dispute Resolution).

F. All penalties shall begin to accrue on the first day of noncompliance with any applicable provision of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue, (1) during the 14-day grace period provided in Section XII. Paragraph C. (Submissions Requiring Agency Approval), (2) with respect to a

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same dates here.

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1 Settling Defendants' receipt from EPA of a demand for payment of
 2 the penalties, unless Settling Defendants invoke the dispute
 3 resolution procedures under Section XIX. (Dispute Resolution).
 4 All payments under this Section shall be paid to the United
 5 States according to instructions to be provided by EPA before
 6 payment. Copies of check(s) paid or certifications of electronic
 7 funds transfers pursuant to this Section, and any accompanying
 8 transmittal letter(s), shall be sent to the United States as
 9 provided in Section XXIX. (Notices and Submissions) within ten
 10 (10) days of such payment.
 11 1. The payment of penalties shall not alter in any way
 12 Settling Defendants' obligation to complete the performance of
 13 the Work required under this Consent Decree.
 14 3. Penalties shall continue to accrue as provided in
 15 Paragraph F., above, during any dispute resolution period, but
 16 need not be paid until the following:
 17 1. If the dispute is resolved by agreement or by a
 18 decision of EPA that is not appealed to this Court, accrued
 19 penalties determined to be owing shall be paid according to the
 20 terms of Paragraph H., above, within fifteen (15) days of the
 21 agreement or the receipt of EPA's decision or order;
 22 2. If the dispute is appealed to this Court and the
 23 United States prevails in whole or in part, Settling Defendants
 24 shall pay, according to the terms of Paragraph H., above, all
 25 accrued penalties, determined by the Court to be owed, within
 26 thirty (30) days of receipt of the Court's decision or order,
 27 except as provided in sub-Paragraph J., below;
 28 3. If the District Court's decision is appealed by
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1 deficient submission under Section XII. (Submissions Requiring
 2 Agency Approval), during the period, if any, beginning on the
 3 31st day after EPA's receipt of such submission until the date
 4 that EPA notifies Settling Defendants of any deficiency; (3) with
 5 respect to a decision by the Director of the Waste Management
 6 Division, EPA Region IX, or any designee or successor, under
 7 Paragraph D.2., E.1., or F.1. of Section XXI. (Dispute
 8 Resolution), during the period, if any, beginning on the 31st day
 9 after the date that Settling Defendants' reply to EPA's Statement
 10 of Position is received until the date that the Director issues a
 11 final decision regarding such dispute; or (4) with respect to
 12 judicial review by this Court of any dispute under Section XXI.
 13 (Dispute Resolution), during the period, if any, beginning on the
 14 31st day after the Court's receipt of the final submission
 15 regarding the dispute until the date that the Court issues a
 16 final decision regarding such dispute. Nothing herein shall
 17 prevent the simultaneous accrual of separate penalties for
 18 separate violations of this Consent Decree.
 19 G. Following EPA's determination that Settling Defendants
 20 have failed to comply with a requirement of this Consent Decree,
 21 EPA may give Settling Defendants written notification and
 22 describe the noncompliance. EPA may send the Settling Defendants
 23 a written demand for the payment of the penalties. However,
 24 Settling Defendants are subject to stipulated penalties as
 25 provided in the preceding Paragraph regardless of whether EPA has
 26 notified the Settling Defendants of a violation.
 27 H. All penalties owed to the United States under this
 28 section shall be due and payable within thirty (30) days of the
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any party to the dispute, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States according to instructions to be provided by EPA before payment, or to Settling Defendants, to the extent that they prevail.

K. 1. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph H., above, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

2. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

L. Notwithstanding any other provision of this Section, the United States may, in its sole discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

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XIII. COORDINATED ENFORCEMENT RECOVERY

A. This Section is intended to provide the framework for (a) the approach to and enforcement against Third Parties who have not resolved their liabilities for the Site pursuant to the Cashout Settlement(s), and (b) for the distribution in accordance with this Consent Decree of monetary proceeds obtained through actions, claims, settlements, judgments and other efforts from Third Parties in accordance with this Consent Decree.

B. To the extent consistent with prosecutorial and litigation discretion, the United States and the Settling Defendants agree to act in good faith to coordinate their approach in any enforcement, cost recovery, or other claim against Third Parties.

C. Except as provided below, any monetary recovery obtained by the United States or the Settling Defendants from any Third Party in any action or claim relating to the financing or performance of Site activities or recovery of Site response costs shall be deposited into the Cash Account of the Casamalia Consent Decree Escrow Account to be distributed to other Accounts of the Escrow Account according to the funding priorities established under this Consent Decree at Section XVII. Paragraph E. (Escrow Accounts/Financing The Work).

1. Reimbursement of Expenditures

a. Except as provided in Paragraph C.3. and C.3., below, if the United States or the Settling Defendants obtain monetary recovery from a Third Party that does not resolve its liability pursuant to the Cashout Settlement(s), then the funds recovered may be first used to reimburse the United States

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the recovery, or (c) that the claimed cost is not recoverable under this Section's terms or not related to the Third Party recovery. The Settling Defendants may dispute a claim of the United States under this Paragraph C. based upon allegations (a) of an accounting error, (b) that the cost item is inconsistent with the NCP, or (c) that the claimed cost was not related to the Third Party recovery. Any dispute with respect to a claim shall be resolved pursuant to Section XXI., Paragraph E. (Dispute Resolution). In the event of such a dispute, the disputed funds shall be deposited with the Escrow Manager in a separate interest bearing account pending resolution of the dispute.

2. Recovery Against The State

All monetary recoveries obtained from resolution in whole or in part of the State of California's potential liabilities associated with the Casamala Site shall be deposited in the Cash Account and then transferred in full to the 30-Year O&M Work Sub-Account subject only to the following exceptions:

a. 3-Max Settlement On Or Before Fifteen Months
If the monetary recovery is (i) authorized or obtained by settlement agreement signed by the United States, the State, and the Settling Defendants or (ii) is otherwise received in the Escrow Account without objection of any Party on or before the date fifteen (15) months following lodging of the Consent Decree, EPA may, in its discretion authorize and direct the Escrow Manager to transfer up to seventy-five percent (75%) of the monetary recovery, including any associated interest accrual and income, to the Phase II Account.

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and the Settling Defendants for all expenditures each such party has made in pursuing such recovery. After the Parties have been fully reimbursed for such costs, then the remaining amount of the monetary recovery shall be deposited in the Cash Account of the Escrow Account for distribution according to the priorities set forth in Section XVII. Paragraph E. (Escrow Accounts/Financing the Work) of this Consent Decree. Except as provided below, expenditures subject to reimbursement shall begin to accrue as to each Third Party after the deadline has passed for resolution of that Third Party's Site liability through the Cashout Settlements.

b. In the event that both the United States and the Settling Defendants have made expenditures for pursuit of a claim against a Third Party, the monetary proceeds received shall be distributed equally between the United States and the Settling Defendants until one party's expenditures are fully satisfied after which the other party's expenditures shall be fully reimbursed, if possible.

c. In order to obtain reimbursement of expenditures pursuant to this Paragraph C., within thirty (30) days of judgment or settlement or other receipt of funds, the United States and the Settling Defendants shall submit to the other a claim for reimbursement of the expenditures which have occurred with respect to the Third Party claim, including sufficient documentation supporting and justifying payment of the claim. The United States may dispute a claim of the Settling Defendants' based upon allegations (a) of an accounting error, (b) that the costs are unreasonable or excessive in relation to

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b. 2-Max Settlement On Or Before Fifteen Months
If the monetary recovery is authorized or obtained by settlement agreement signed by only the United States and the State on or before the date fifteen (15) months following lodging of the Consent Decree, EPA may, in its discretion, authorize and direct the Escrow Manager to transfer up to one hundred percent (100%) of the monetary recovery, including any associated interest accrual and income, to the Phase II Account.

c. Settlement or Judgment After Fifteen Months
If the monetary recovery is authorized (i) by settlement agreement signed by the United States and/or the Settling Defendants or (ii) by an entered judgment after the date fifteen (15) months following lodging of the Consent Decree, EPA may, in its discretion, authorize and direct the Escrow Manager to transfer up to seventy-five percent (75%) of the monetary recovery, including any associated interest accrual and income, to the Phase II Account.

d. Allocation of Expenditures. (i) If the monetary recovery obtained from the State is authorized pursuant to a settlement agreement signed by the United States and/or Settling Defendants or an entered judgment after the date fifteen (15) months following lodging of the Consent Decree, Settling Defendants and the United States may be reimbursed from any such recovery for all expenditures attributable to preparation for litigation against the State incurred by the Settling Defendants and/or the United States after the date fifteen (15) months following lodging of the Consent Decree. The reimbursement shall be subject to the terms of Paragraph C.i.b. and C.i.c., above.

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(ii) If the monetary recovery obtained from the State is authorized pursuant to a settlement agreement signed by the United States and/or the Settling Defendants or an entered judgment on or before the date fifteen (15) months following lodging of the Consent Decree, the Settling Defendants and the United States shall not be reimbursed from the recovery, subject to Paragraph E. below, for any expenditures, and the proceeds of the recovery shall not be subject to the terms of Paragraph C.i., above.

3. Recovery Against The Casualty Entities
All monetary recoveries obtained from the Casualty Entities shall be deposited in the Cash Account and then transferred in full to the 30-Year O&M Work Sub-Account subject only to the following exceptions: (i) the Settling Defendants and the United States shall be entitled to reimbursement from the recovery proceeds in accordance with the terms of Paragraph C.i.b. and C.i.c., above, for all expenditures attributable to settlement with or litigation against the Casualty Entities incurred after lodging of this Consent Decree; and (ii) EPA may, in its discretion, authorize and direct the Escrow Manager to transfer up to twenty-five percent (25%) of the net monetary recovery (i.e. after the allocation under (i) above), including any associated interest accrual or income, to the Phase II Account.

D. Except for actions against Third Parties already initiated or ongoing, the provisions of this Section XXIII. (Coordinated Enforcement Recovery) shall terminate three (3) years from the effective date, provided in Paragraph A.3. of

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1 Section XVII. (Cost Estimates and Fund Transfer), of the Final
2 Cost Estimate.

3 E. Nothing in this Section is intended to authorize
4 recoveries from Third Parties that are not otherwise recoverable
5 pursuant to Sections 106 and 107 of CERCLA or other applicable
6 law. Further, the United States reserves its rights against the
7 Settling Defendants, as provided in Section XXV, Paragraph C.
8 (Covenant Not To Sue/Reservations of Rights), and/or against
9 Third Parties to recover any Response Costs incurred in
10 connection with actions against Third Parties that are not
11 reimbursed or otherwise recovered pursuant to this Section.

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XIV. LEAD AGENCY

1 A. As used in this Section, CERCLA shall mean the
2 Comprehensive Environmental Response, Compensation, and Liability
3 Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the
4 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.
5 99-499, 100 Stat. 1613 (1986), and "NCP" shall mean the National
6 Oil and Hazardous Substances Pollution Contingency Plan, dated
7 March 8, 1990 (55 Fed. Reg. 8813), promulgated pursuant to
8 Section 105 of CERCLA, 42 U.S.C. §§ 9605.

9 B. This Consent Decree is intended to govern all Site
10 regulatory and enforcement activities. EPA is the lead agency
11 for the governmental/regulatory oversight of the Phase I and
12 Phase II Work. As the lead agency, pursuant to its authority
13 under CERCLA, EPA shall make all decisions, including but not
14 limited to, remedy selection, ADAMS determinations, technical
15 determinations and acceptance or approval of the Work, Consent
16 Decree compliance, and enforcement matters related to this
17 Consent Decree. Pursuant to CERCLA and the NCP, EPA intends to
18 provide an opportunity for State involvement in CERCLA response
19 activities. Unless notified otherwise by the State, EPA intends
20 to rely upon the California Department of Toxic Substances
21 Control ("DTSC"), as the Support Agency responsible for
22 coordinating and interacting with EPA on matters related to this
23 Consent Decree and the Site.

24 C. The designation of the lead regulatory agency for the
25 governmental/regulatory oversight of the 30-Year O&M and Post-30
26 Year O&M Work is not resolved by the terms of this Consent
27 Decree. Nothing in or under this Consent Decree, including EPA's
28

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1 role as the lead regulatory agency for the governmental/
 2 regulatory oversight until Certification of Completion of Phase
 3 II Work or the pendency of any dispute concerning the Final Cost
 4 Estimate after Certification of Completion of Phase II Work shall
 5 create any presumption that EPA is, or require that EPA be, the
 6 lead regulatory agency for the 30-Year O&M and Post-30 Year O&M
 7 Work. No later than the fourth anniversary date of the
 8 Initiation of the O&M Base Period Work, EPA shall make a good
 9 faith attempt to resolve with the State and other governmental
 10 entities, as appropriate, the designation of the lead regulatory
 11 agency for the governmental/regulatory oversight of the 30-Year
 12 O&M and Post-30 Year O&M Work.

13 If EPA is designated the lead regulatory agency for the
 14 governmental/regulatory oversight of the 30-Year O&M and/or Post-
 15 30 Year O&M Work, monies in the 30-Year and/or Post-30 Year O&M
 16 Oversight Sub-Accounts shall be transferred to EPA upon notice to
 17 the Escrow Manager of EPA's designation. Upon approval of the
 18 Parties, monies in the 30-Year and/or Post-30 Year O&M Oversight
 19 Sub-Accounts may be transferred to the State if the State is
 20 designated the lead regulatory agency for governmental/regulatory
 21 oversight of the 30-Year O&M and/or Post-30 Year O&M Work. If
 22 EPA is not designated the lead regulatory agency, absent approval
 23 of the Parties to transfer such monies to the new lead agency,
 24 monies in the 30-Year and Post-30 Year O&M Oversight Sub-Accounts
 25 shall be distributed to other Accounts of the Escrow Account in
 26 priority order pursuant to Section XVII. Paragraph 2. (Escrow
 27 Accounts/Financing The Work).

28 D. Settling Defendants' rights and obligations under this
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1 Consent Decree shall not be affected by the designation of a new
 2 lead agency pursuant to this Section XXIV.

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XIV. COVENANTS NOT TO SUE/RESERVATIONS OF RIGHTS

A. United States' Covenants Not To Sue

1. Phase I Work. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, in accordance with Paragraph A.7. below and except as specifically provided in Paragraph C. of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to CERCLA, RCRA, and common law relating to the performance of the Phase I Work.

2. Phase II Work. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, in accordance with Paragraph A.7. below and except as specifically provided in Paragraph C. of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to CERCLA, RCRA, and common law relating to the performance of the Phase II Work. In the event EPA performs or funds any or all of the Phase II Work pursuant to Section XV, Paragraph C.4. (Covenants Not To Sue/Reservations of Rights), response costs incurred by EPA for such Phase II Work shall not be recoverable from Settling Defendants. Subject to the preceding sentence, EPA reserves its rights as specified in Paragraph C.3.d. of this Section against the Settling Defendants.

3. 30-Year O&M

When referred to under this Paragraph A.3., 30-Year O&M includes both the 30-Year O&M Work and associated governmental/regulatory oversight by the United States for the

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30-Year O&M Work. Subject only to the final resolution of any related cost estimate disputes pursuant to Section XXI, Paragraph Z. (Dispute Resolution), receipt of the covenant not to sue under this Paragraph A.3. shall require full funding of both the 30-Year O&M Work Sub-Account and the 30-Year O&M Oversight Sub-Account.

In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, in accordance with Paragraph A.7. below and except as specifically provided in Paragraph C. of this Section, the United States shall covenant not to sue or to take administrative action against the Settling Defendants pursuant to CERCLA, RCRA and common law relating to 30-Year O&M as follows:

a. At any time within three years after the Final Cost Estimate becomes effective and after any and all transfers under Section XVIII. (Cost Estimates and Fund Transfers) are made, the Settling Defendants shall receive a covenant not to sue for 30-Year O&M if the amount in the 30-Year O&M Account is equal to or greater than the Final Cost Estimate. The covenant will become effective when the 30-Year O&M Account is fully funded based upon a fully effective Final Cost Estimate as provided in Section XVII. Paragraph A.3.c. (Cost Estimates and Fund Transfers). After the covenant not to sue becomes effective, excess funds in the 30-Year O&M Account, if any, will be transferred to the next Account with equal or higher priority as set forth in Section XVII. Paragraph E. (Escrow Accounts/Financing The Work).

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b. If, at any time within three years after the Final Cost Estimate becomes effective and after any and all transfers under Section XVIII. (Cost Estimates and Fund Transfers) are made, there is a shortfall of funds in the 30-Year O&M Account, the Settling Defendants may receive a covenant not to sue for 30-Year O&M if they elect to fund the shortfall. For the election to be effective, the Settling Defendants must pay the unfunded amount into the 30-Year O&M Account no later than sixty (60) days after the third anniversary of the effective date of the Final Cost Estimate for 30-Year O&M. The covenant not to sue shall be effective upon receipt of the money in the 30-Year O&M Account of the Escrow Account.

c. If the Settling Defendants do not receive a covenant not to sue pursuant to Paragraph 3.a or 3.b. above, they shall be entitled to a covenant not to sue for 30-Year O&M Work until an amount equal to the annualized cost of two years of O&M Work, as determined by the Final Cost Estimate, remains in the 30-Year O&M Work Sub-Account, at which time, the Settling Defendant's covenant not to sue for 30-Year O&M Work shall expire.

d. The money in the RCRA Trust Fund shall be included in the calculations made pursuant to this Paragraph 3., only if it has been transferred into the 30-Year O&M Work Sub-Account or is otherwise available, without impediment, for the 30-Year O&M Work.

e. Settling Defendants shall only be entitled to exercise the Full Funding Option pursuant to this Paragraph A.3.a. or A.3.b. based upon a fully effective Final Cost Estimate

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for 30-Year O&M.

4. Post-30-Year O&M

When referred to under this Paragraph A.4., Post-30 Year O&M includes both the Post-30 Year O&M Work and associated governmental/regulatory oversight by the United States for the Post-30 Year O&M Work. Subject only to the final resolution of any related cost estimate disputes pursuant to Section XXI. Paragraph E. (Dispute Resolution), receipt of the covenant not to sue under this Paragraph A.4. shall require full funding of both the Post-30 Year O&M Work Sub-Account and the Post-30 Year O&M Oversight Sub-Account.

In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, in accordance with Paragraph A.7. below and except as specifically provided in Paragraph C. of this Section, the United States shall covenant not to sue or to take administrative action against the Settling Defendants pursuant to CERCLA, RCRA and common law relating to Post-30 Year O&M as follows:

a. At any time within three years after the Final Cost Estimate becomes effective and after any and all transfers under Section XVIII. (Cost Estimates and Fund Transfers) are made, the Settling Defendants shall receive a covenant not to sue for Post-30 Year O&M if the amount in the Post-30 Year O&M Account is equal to or greater than the Final Cost Estimate. The covenant will become effective when the Post-30 Year O&M Account is fully funded based upon a fully effective Final Cost Estimate as provided in Section XVIII. Paragraph

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1 CERCLA, RCRA, or common law (a) until three (3) years from the
 2 date of entry of this Consent Decree for recovery of Past
 3 Response Costs, and (b) for Past Response Costs that are
 4 reimbursed pursuant to this Consent Decree.
 5 6. Future Response Costs
 6 In consideration of the actions that will be
 7 performed and the payments that will be made by the Settling
 8 Defendants under the terms of this Consent Decree, in accordance
 9 with Paragraph A.7. below and except as specifically provided in
 10 Paragraph C. of this Section,
 11 a. the United States covenants not to sue or to
 12 take administrative action against Settling Defendants pursuant
 13 to CERCLA, RCRA, or common law for recovery of Unfunded Future
 14 Response Costs incurred up through but not including the date
 15 three (3) years from the date of entry of this Consent Decree;
 16 and
 17 b. the United States covenants not to sue or to
 18 take administrative action against Settling Defendants pursuant
 19 to CERCLA, RCRA, or common law for recovery of Funded Future
 20 Response Costs paid by the Settling Defendants and received by
 21 EPA pursuant to Paragraph C. of Section XIX. (Reimbursement of
 22 Response Costs); and
 23 / c. the United States covenants not to sue or to
 24 take administrative action against Settling Defendants pursuant
 25 to CERCLA, RCRA, or common law for the recovery of Funded Future
 26 Response Costs drawn out of the Future Response Costs Sub-Account
 27 or the Phase II Work Sub-Account and received by EPA pursuant to
 28 Section XIX, Paragraph D. (Reimbursement of Response Costs).

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1 A.3.c. (Cost Estimates and Fund Transfers). After the covenant
 2 not to sue becomes effective, excess funds in the Post-30 Year
 3 O&M Account, if any, will be transferred to the Account with the
 4 next highest priority as set forth in Section XVII. Paragraphs E.
 5 and F. (Escrow Accounts/Financing the Work).
 6 b. If, at any time within three years after the
 7 Final Cost Estimate becomes effective and after any and all
 8 transfers under Section XVII. (Cost Estimates and Fund
 9 Transfers) are made, there is a shortfall of funds in the Post
 10 30-Year O&M Account, the Settling Defendants may receive a
 11 covenant not to sue for Post-30 Year O&M if they elect to fund
 12 the shortfall. For the election to be effective, the Settling
 13 Defendants must pay the unfunded amount into the Post-30 Year O&M
 14 Account no later than sixty (60) days after the third anniversary
 15 of the effective date of the Final Cost Estimate for Post-30 Year
 16 O&M. The covenant not to sue shall be effective upon receipt of
 17 the money in the Post-30 Year O&M Account of the Escrow Account.
 18 c. Settling Defendants shall only be entitled to
 19 exercise the Full Funding Option pursuant to this Paragraph
 20 A.4.a. or A.4.b. based upon a fully effective Final Cost Estimate
 21 for Post-30 Year O&M.
 22 5. Past Response Costs
 23 In consideration of the actions that will be
 24 performed and the payments that will be made by the Settling
 25 Defendants under the terms of this Consent Decree, in accordance
 26 with Paragraph A.7. below and except as provided in Paragraph C.
 27 of this Section, the United States covenants not to sue or to
 28 take administrative action against the Settling Defendants under

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7. Except with respect to future liability, the covenants not to sue set forth in Paragraphs 1., 2., 5. and 6. above, shall take effect upon the date of entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon completion of the Initial Phase II Work. The covenants not to sue in Paragraphs 3. and 4. above shall take effect as described therein. Each of these covenants not to sue is conditioned upon the complete and satisfactory performance by Settling Defendants of any applicable obligations under this Consent Decree with respect to each covenant not to sue. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person(s).

8. Settling Defendants' Covenants Not To Sue. Subject to the Settling Defendants' Reservations of Rights at Paragraph D. below, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action, either direct or collateral, against the United States with respect to the Site, any liabilities associated with the Site, or this Consent Decree, including but not limited to, (i) any claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b) (2), 111, 112, 113 or any other provision of law; or (ii) any claim against the United States, including any department, agency, subdivision, or instrumentality of the United States, under CERCLA or RCRA related to the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

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C. United States' Reservations of Rights

1. Reopeners

2. United States' Pre-Certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (i) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, after the final ROD and prior to completion of the Initial Phase II Work, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with any other relevant information indicates that response actions implemented under this Consent Decree are not protective of human health or the environment. Provided, however, subject to the priorities and transfer restrictions in Sections XVII. (Escrow Accounts/Financing the Work) and XVIII. (Cost Estimates and Fund Transfer), if EPA determines, in its sole discretion, that adequate unrestricted funds are available to finance and perform the remaining Phase II Work and any additional work necessitated under the reopeners in this Paragraph C.1.a. ("reopener work"), upon notice from EPA, the Settling Defendants shall perform the reopener work using such funds, and upon acceptance of its completion by EPA, the United States shall be deemed to have accepted the same.

1 State shall covenant not to sue Settling Defendants for the
 2 response work performed.
 3
 4 b. United States' Post-Certification
 5 Reservations. Notwithstanding any other provision of this
 6 Consent Decree, the United States reserves, and this Consent
 7 Decree is without prejudice to, the right to institute
 8 proceedings in this action or in a new action, or to issue an
 9 administrative order seeking to compel Settling Defendants (1) to
 10 perform further response actions relating to the Site or (2) to
 11 reimburse the United States for additional costs of response if,
 12 subsequent to completion of the Initial Phase II Work:
 13 (1) conditions at the Site, previously unknown to EPA,
 14 are discovered, or
 15 (11) information, previously unknown to EPA, is
 16 received, in whole or in part,
 17 and these previously unknown conditions or this information
 18 together with other relevant information indicate that response
 19 actions implemented under this Consent Decree are not protective
 20 of human health or the environment.
 21 2. For purposes of Paragraph C.1.a., above, the
 22 information and the conditions known to EPA shall include only
 23 that information and those conditions set forth in the final
 24 Record of Decision for the Site, together with other EPA response
 25 action decision document(s) selecting the final remedy, and the
 26 administrative record(s) supporting these response action
 27 decision document(s). For purposes of Paragraph C.1.b., above,
 28 the information and the conditions known to EPA shall include
 only that information and those conditions set forth in the final
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1 Record of Decision for the Site, together with other EPA response
 2 action decision document(s) selecting the final remedy, and the
 3 administrative record(s) supporting these response action
 4 decision document(s), and any information received by EPA
 5 pursuant to the requirements of this Consent Decree prior to
 6 completion of the Initial Phase II Work.

7 3. United States' General Reservations of Rights. The
 8 United States' covenants not to sue set forth above do not
 9 pertain to any matters other than those expressly specified in
 10 Paragraph A., above. The United States reserves, and this
 11 Consent Decree is without prejudice to, all claims, rights, and
 12 defenses against Settling Defendants with respect to all other
 13 matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste materials outside of the Site;
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. except as provided in Paragraph A.2. of this Section, after the expiration of the moratorium set forth in Paragraph A.3., above, liability for Past Response Costs (including any Unfunded Future Response Costs) relating to the Site, not otherwise recovered, that have been incurred by the United States by or through any of its departments, agencies, instrumentalities, or subdivisions;
- e. criminal liability;

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1 f. liability for violations of federal or state
2 law which occur during or after implementation of the Work;
3 g. liability for the 30-Year O&M Work for which
4 the Settling Defendants have not received a covenant not to
5 sue pursuant to this Consent Decree; and
6 h. liability for Post-30 Year O&M Work for which
7 Settling Defendants have not received a covenant not to sue
8 pursuant to this Consent Decree.

9 4. In the event EPA determines that Settling
10 Defendants have failed to implement any provisions of the Phase I
11 or Phase II Work in an adequate or timely manner, EPA may perform
12 any and all portions of such Work as EPA determines necessary.
13 Settling Defendants may invoke the procedures set forth in
14 Section XXI. (Dispute Resolution) to dispute EPA's determination
15 that the Settling Defendants failed to implement a provision of
16 the Phase I or Phase II Work in an adequate or timely manner as
17 arbitrary and capricious or otherwise not in accordance with law
18 pursuant to Section XXI. Paragraph D. (Dispute Resolution). Such
19 dispute shall be resolved on the administrative record.

20 5. Notwithstanding any other provision of this
21 Consent Decree, the United States retains all authority and
22 reserves all rights to take any and all response actions
23 authorized by law; provided however, that the United States shall
24 not take any such actions that would constitute Phase I Work,
25 except in accordance with Section VII. Paragraph C. (Work To Be
26 Performed) or Section XV. (Emergency Response).

27 6. In any dispute resolution proceeding pursuant to
28 Section XXI. (Dispute Resolution), the United States reserves all

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1 rights to assert any and all defenses available under applicable
2 law.

3 **D. Settling Defendants' Reservations of Rights**

4 1. The Settling Defendants' covenants not to sue
5 set forth in Paragraph B. above, do not pertain to any matters
6 other than those expressly specified in such covenants. The
7 Settling Defendants reserve, and this Consent Decree is without
8 prejudice to, all rights against EPA with respect to all other
9 matters.

10 2. Except as otherwise provided in this Consent
11 Decree, the Settling Defendants reserve all of their claims,
12 rights and defenses with respect to the following:

13 a. the United States' right to recover
14 against the Settling Defendants any response, oversight, or
15 related cost, including interest and indirect costs, not
16 otherwise funded or reimbursed pursuant to this Consent
17 Decree;

18 b. liability of the Settling Defendants
19 arising from the past, present, or future disposal, release,
20 or threat of release of Waste Materials outside of the Site;

21 c. claims against any department, agency,
22 subdivision or instrumentality of the United States ("United
23 States") that has not resolved its liability for conditions
24 at the Site in the Cashout Settlements;

25 d. any claim against any Third Party that
26 does not resolve its liability pursuant to the Cashout
27 Settlements, the State of California, and the Camille
28 Entities;

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e. any claim brought by the United States against the Settling Defendants that is otherwise not precluded by this Consent Decree; provided, however, that Settling Defendants may not assert any claim against any department, agency, instrumentality, or subdivision of the United States as to which contribution protection has been received pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

f. Settling Defendants' obligation to perform the 30-Year and Post 30-Year O&M Work;

g. any matter relating to compliance with the terms of this Consent Decree;

h. any matter relating to any request by EPA to perform additional work pursuant to Section VII. (Additional Response Actions) and Paragraphs C.1.a. and C.1.b. of Section XXV. (Covenants Not To Sue/Reservations of Rights);

i. any matter relating to the RCRA Trust Fund;

j. any negligence action against the United States pursuant to Section XVI. (Indemnification and Insurance); and

k. Settling Defendants' right to challenge any settlement between the United States and any Third Party, including the State and the Casamalis Entities, with respect to the Site.

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XKVI. EFFECT OF SETTLEMENT, CONTRIBUTION PROTECTION

A. Nothing in this Consent Decree shall be construed to create any rights in, or grant any causes of action to, any person not a Party to this Consent Decree. Except as provided in Section XXIII. (Coordinated Enforcement Recovery), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

B. The Parties agree, and by entering this Consent Decree, this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and any other applicable law, for matters addressed in this Consent Decree. For purposes of this Paragraph, "matters addressed" shall include liability pursuant to CERCLA, RCRA, and common law for Phase I Work, Phase II Work, 30-Year O&M (including 30-Year O&M Work and costs of governmental/regulatory oversight), Post-30 Year O&M (including Post-30 Year O&M Work and costs of governmental/regulatory oversight), Past Response Costs and Future Response Costs. Provided, however, the Settling Defendants' contribution protection for unreimbursed Past Response Costs (including Unfunded Future Response Costs) and 30-Year and Post-30 Year O&M (including 30-Year and Post-30 Year O&M Work and costs of governmental/regulatory oversight) shall expire on the expiration of the Full Funding Option elections, as provided pursuant to

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1 Section XXV. Paragraphs A.3. and A.4. (Covenants Not To
2 Sue/Reservations of Rights), for matters for which the Settling
3 Defendants have not received a covenant not to sue under this
4 Consent Decree.

5 C. With respect to any suit or claim for contribution
6 brought against them for matters related to this Consent Decree
7 or the Casamalia Site, the Settling Defendants will notify the
8 United States in writing within seven (7) days of service of the
9 complaint on them. In addition, Settling Defendants shall notify
10 the United States within seven (7) days of service or receipt of
11 any dispositive motion and within seven (7) days of receipt of
12 any order from a court settling a case for trial.

13 D. In any subsequent administrative or judicial proceeding
14 initiated by the United States for injunctive relief, recovery of
15 response costs, or other appropriate relief relating to the Site,
16 as governed by Section XXV. (Covenants Not To Sue/Reservations of
17 Rights), Settling Defendants shall not assert, and may not
18 maintain, any defense or claim based upon the principles of a bar
19 due to a statute of limitations, waiver, res judicata, collateral
20 estoppel, issue preclusion, claim-splitting, or other defenses
21 based upon any contention that the claims raised by the United
22 States in the subsequent proceeding were or should have been
23 brought in the instant case; provided, however, that nothing in
24 this Paragraph affects the enforceability of the covenants not to
25 sue set forth in Section XXV. (Covenants Not To Sue/Reservations
26 of Rights).

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XXVII. ACCESS TO INFORMATION

1 A. Settling Defendants shall provide to EPA, upon request,
2 copies of all documents and information, unless privileged,
3 within their possession or control or that of their contractors
4 or agents generated pursuant to the obligations of this Consent
5 Decree, relating to activities at the site, or relating to the
6 implementation of this Consent Decree, including, but not limited
7 to, sampling, analysis, chain of custody records, manifests,
8 trucking logs, receipts, reports, sample traffic routing,
9 correspondence, or other documents or information related to the
10 work; provided, however, that except with respect to documents or
11 information generated pursuant to the obligations of this Consent
12 Decree, Settling Defendants reserve any rights and defenses they
13 may have to challenge such requests pursuant to Section 104(e) of
14 CERCLA, 42 U.S.C. § 9604(e). Settling Defendants shall also make
15 available to EPA for purposes of investigation, information
16 gathering, or testimony, their employees, agents, or
17 representatives with knowledge of relevant facts concerning the
18 performance of the work. Any requests for additional documents
19 and information shall be governed by applicable law.

20 B. Settling Defendants may assert business confidentiality
21 claims covering part or all of the documents or information
22 submitted to EPA under this Consent Decree to the extent
23 permitted by, and in accordance with, Section 104(e)(7) of
24 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
25 Documents or information determined to be confidential by EPA
26 will be afforded the protection specified in 40 C.F.R. Part 2,
27 Subpart B. If no claim of confidentiality accompanies documents
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1 or information when they are submitted to EPA, or if EPA has
 2 notified Settling Defendants that the documents or information
 3 are not confidential under the standards of Section 104(e) (7) of
 4 CERCLA, the public may be given access to such documents or
 5 information without further notice to Settling Defendants.
 6 C. With respect to information disclosure to EPA under
 7 this Section, the Settling Defendants may assert that certain
 8 documents, records and other information are privileged under the
 9 attorney-client privilege or any other privilege recognized by
 10 federal law. If the Settling Parties assert such a privilege in
 11 lieu of providing documents, they shall provide EPA with the
 12 following: (1) the title of the document, record, or
 13 information; (2) the date of the document, record, or
 14 information; (3) the name and title of the author of the
 15 document, record, or information; (4) the name and title of each
 16 addressee and recipient; (5) a description of the contents of the
 17 document, record, or information; and (6) the privilege asserted
 18 by the Settling Defendants. However, no documents, reports or
 19 other information created or generated pursuant to the
 20 requirements of the Consent Decree shall be withheld on the
 21 grounds that they are privileged.
 22 D. No claim of confidentiality shall be made with respect
 23 to any data, including, but not limited to, all sampling,
 24 analytical, monitoring, hydrogeologic, scientific, chemical, or
 25 engineering data.

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XXVIII. RETENTION OF RECORDS

A. Until seven (7) years after the Certification of
 Completion of Phase II Work pursuant to Section XIV.
 (Certifications of Completion), each Settling Defendant shall
 preserve and retain all records and documents (not including
 duplicates) now in its possession or control, or which come into
 its possession or control, that relate in any manner to the
 performance of the Work or any ROD or other EPA response action
 decision document pursuant to this Consent Decree, or that relate
 to the liability of any person for response actions conducted and
 to be conducted at the Site, regardless of any corporate records
 retention policy to the contrary. For the same period, Settling
 Defendants shall also instruct their contractors and agents to
 preserve all documents, records, and information of whatever
 kind, nature or description (not including duplicates) relating
 to the performance of the Work.

B. At the conclusion of this document retention period,
 Settling Defendants shall notify the United States at least
 ninety (90) days prior to the destruction of any such records or
 documents, and, upon request by the United States, Settling
 Defendants shall make available any such records or documents to
 EPA. The Settling Defendants may assert that certain documents,
 records and other information are privileged under the attorney-
 client privilege or any other privilege recognized by federal
 law. Any documents as to which a privilege claim is or may be
 asserted shall be retained for five (5) additional years unless
 Settling Defendants have received a covenant not to sue pursuant
 to Section XIV. Paragraphs A.3. and A.4. (Covenants Not to

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1 Sue/Reservations of Rights) and are no longer potentially liable
 2 for Past Response Costs. Upon request, for any documents as to
 3 which the Settling Defendants have asserted a privilege claim,
 4 they shall provide the United States with a privilege index that
 5 includes the following information sufficient to determine
 6 whether specific documents are relevant to any further claim(s)
 7 related to the Site and the basis for the privilege asserted: the
 8 title, date, name and title of authors, name and title of
 9 addressees and recipients, description of the subject, and the
 10 asserted privilege. No documents, reports or other information
 11 created or generated pursuant to the requirements of the Consent
 12 Decree shall be withheld from the United States on the grounds
 13 that they are privileged.

14 C. To the best of its recollection and knowledge, each
 15 Settling Defendant hereby certifies, individually, that it has
 16 not knowingly or willfully altered, mutilated, discarded,
 17 destroyed or otherwise disposed of any records, documents or
 18 other information relating to its potential liability regarding
 19 the Site since notification of potential liability by the United
 20 States.

21 D. EPA has obtained copies of certain original records
 22 from the Casamalia facility, which records in the form of
 23 microfiche, are in the possession of EPA. Settling Defendants
 24 have in their possession a duplicate copy of the microfiche
 25 records. Each set of microfiche comprises 2148 microfiche pages.
 26 Each Settling Defendant hereby stipulates that to the best of its
 27 knowledge the microfiche is an accurate reproduction of the
 28 original Casamalia records. Each Settling Defendant further

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1 stipulates that those copies of manifests, dump receipts, weigh
 2 tickets, and other waste disposal records obtained from the
 3 Casamalia facility, and recorded in microfiche form, that are
 4 attributable to that Settling Defendant and all related entities
 5 to that Settling Defendant listed in Appendix D are true and
 6 accurate copies of the original records, authentic and admissible,
 7 as records of regularly conducted business activity within the
 8 meaning of Rules 1003, 1004, 901, and 802(c) of the Federal Rules
 9 of Evidence.

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XXIX. NOTICES AND SUBMISSIONS

A. Whenever, under the terms of this Consent Decree, written notice is required to be given or a deliverable or other submission or document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: United States v. Casamalia Resources, et al.
DV # 90-7-1-611A

As to EPA:

Maren Uno (or Successor)
EPA Project Coordinator (Casamalia Site)
United States Environmental Protection Agency
Region IX
Mail Code H-3
75 Hawthorne Street
San Francisco, California 94105

Josanne B. Marchetta (or Successor)
Assistant Regional Counsel - Casamalia Site
Office of Regional Counsel, RC-3
75 Hawthorne Street
San Francisco, California 94105

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As to the Settling Defendants:

Cory Bertelsen
Casamalia Site Project Manager
CB Consulting, Inc.
729 Low Palms Drive
Lafayette, California 94549

Dan Henker
Co-Chair, Casamalia Site Steering Committee
Chevron Research and Technology Company
1003 West Cutting Blvd.
Richmond, California 94804

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XXX. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

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XXI. EXTENSION OF JURISDICTION

This Court retains jurisdiction over the subject matter of this Consent Decree and the Settling Defendants and the United States for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling the Settling Defendants and the United States to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI. (Dispute Resolution) hereof.

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XXIII. APPENDICES

The following appendices are attached to and incorporated

into this Consent Decree:

"Appendix A" is the Statement of Work.

"Appendix B" is a Caswellia Site map and schematic diagram.

"Appendix C" is a list of Settling Defendants.

"Appendix D" is a list of Settling Defendants' Affiliates.

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XXIII. COMMUNITY RELATIONS

Settling Defendants shall provide for community relations

support activities as set forth in the Statement of Work at

Appendix A. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. In

accordance with the ROW, as requested by EPA, Settling Defendants

shall participate in the preparation of such information for

dissemination to the public and in public meetings which may be

held or sponsored by EPA to explain activities at or relating to

the Site.

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xxxiv. MODIFICATION

A. Modifications to the SOW or its schedules shall be made as provided therein. All such modifications shall be made in writing.

B. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

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xxxv. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 1321(d) (2) of CERCLA, 42 U.S.C. § 9622(d) (2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

B. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

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XXXVI. SIGNATORIES AND SERVICE

A. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind each Party to this Consent Decree.

B. All Parties agree not to oppose entry of this Consent Decree unless, pursuant to Section XXV. (Lodging and Opportunity For Public Comment), the United States has notified the Settling Defendants and the State in writing that it no longer supports entry of the Consent Decree.

C. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under, or relating to, this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

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XXVII. SECTION HEADINGS

The section headings set forth in this Consent Decree and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

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XXXVIII. COUNTERPARTS

This Consent Decree may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

SO ORDERED THIS _____ DAY OF _____, 19____.

United States District Judge

APPENDIX A:
STATEMENT OF WORK

SIGNATURE PAGES NOT INCLUDED
(PAIRS 146 - 211 INCLUSIVE)

02-0067544

CASIMILIA CONSENT DECREE
APPENDIX A:
STATEMENT OF WORK

Casimilia Consent Decree

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